United States Court of Appeals

for the Second Circuit

APPENDIX

77-6144

B

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

WAN SHIH HSIEH,

ınt,

- v -

Docket No. 77-6144

MAURICE F. KILEY, District Director,
IMMIGRATION AND NATURALIZATION SERVICE,
UNITED STATES DEPARTMENT OF JUSTICE,

Appellees.

APPENDIX TO APPELLANT'S BRIEF

LAW OFFICES OF DAVID C. BUXBAUM, P.C.
Attorneys for Appellant

11 Broadway, Suite 1612
New York, New York 10004
(212) 425-4347

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

DATE	NR.	PG. 3. A-A PROCEEDINGS
8-26-76	1.	Filed Complaint, Issued Summons.
8-27-76	2.	Filed Pltffs Affidavit & Order to show cause that defts named show cause why they be ordered to respond immediately to inquiries from the American Embassy in Taiwan regarding the application for permanent residence of the pltffs children e tc, as indicated rtble on 9-3-76.
9-7-76	3.	Filed memo endorsed on Order to show cause filed 8-27-76. The within motion is denied without merit etc, as indicated. Wyatt, J. M/N
9-14-76	4.	Filed Affid avit of deft in opposition to order to show cause as indicated.
9-30-76	5.	Filed summons with marshals return. SERVED ATTY GENL OF THE U. S. 9-27-76.
3-15-77		CASE REASSIGNED TO JUDGE MAC MAHON. M/N
3-17-77	6.	Filed Pre-Trial Order #1...MacMahon,J.
3-30-77	7.	Filed Pre-Trail Order #2..MacMahon,J.
4-6-77	8.	Filed ANSWER by deft.
4-15-77	9/	Filed Pltff's demand for trial by jury.
04-18-77	10	Fildd Stip. and Order amending Pre-Trial Order dted 3/28/77according to the terms and conditions indicated.-- MacMahon, J.
4-18-77	11.	Filed Pltff's Request for production & inspection of documents.
4-27-77	12.	Filed Deft's Response to request for production of documents.
5-6-77	13.	Filed order to show caruse why an order should not be entered precluding defts. from offering prooof in this case, pursuant to F.R.of Civ. P. Rule 37,....Etc., MACMAHON.J. Ret. 5-10-77..
5-10-77	14.	Filed defts. affdvt. in opposition to the pltff's order to show cause
5-10-77	15.	Filed defts' memorandum oflaw in opposition to pltff's order to show cause.
5-10-77		Filed Memo-End on document #13....The within motion is denied in all respects.....Etc...So Ordered....MAC MAHON.J. m/n
5-18-77	16.	Filed defts. affdvt. and notice of motion for an order pursuant to Rules 12(b)(6) & (16), F.R.of Civ. P. disminning the complaint. Ret.
5-18-77	17.	Filed defts. trial memorandum & memorandum in support of the motion to dismiss.
5-18-77	19.	Filed defts. joint statements of agreed facts.
5-18-77	20.	Filed defts. porposed findings of fact and conclusions of law.
5-24-77	21.	Filed True Copy of U.S.C.A. order that Wan Shih Hsieh, Petition for writ of Mandamus with a motionfor a stay is denied...FRSARO...CLERK. U.S.C.A. m/n
6-6-77	22.	Filed Pltff's Brief in support of their her motion for summary judgment and in opposition to deft's motion to dismiss.
6-20-77	23.	Filed defts. affdvt. in opposition to motion for summary judgment.
6-20-77	24.	Filed defts' memorandum of law in opposition to the motion for summary judgment.
6-21-77	25.	Filed Stip & Order adj. the cross-motion of the pltff. to 6-24-77... SO ORDERED.....MAC MAHON.J.
6-23-77	26.	Filed defts. affdvt. in opposition to pltff's motion for summary judgment.
6-24-77	27.	Fld Pltff's Notice of cross-motion for an order granting summary jud etc..Ret: 6-17-77 at 2:15.

A-A

76 Civ 3537

A-B

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 76-36
WAN SHIH JSTEH,	MAURICE F. KILEY, ET.AL.O.	PAGE 3 OF ___ PA

DATE	NR.	PROCEEDINGS — MAC MAHON, J.
6-24-77	28.	Filed Pltffs. reply affdvt.in support of motion for summary judgment.
6-27-77	29.	Filed Pltffs. supplemental affdvt. in reply to the affdvt. of R Groban, Jr., Esq.
6-27-77	30.	Filed Pltff's reply brief in support of her motion for summary judgment and in answer to defts' memorandum of law.
6-27-77	31.	Filed Pltffs. Statement of Disputed Facts.
6-27-77	32.	Filed Pltffs. Rule 9(g) Statement.
6-27-77	33.	Filed Pltff's Rule 9(b) Statement.
8-29-77		Filed Memo-End on motion filed on 6-24-77.....Motion denied, See Memorandum decision of this date granting defts! motion for summary judgment. So Ordered.....MAC MAHON.J. m/n
8-29-77		Filed Memo-End on motion filed on 5-18-77....Motion granted. See memorandum decision of this date....SO ORDERED....MAC MAHON.J.m/n SENT TO ATTY
8-29-77	34.	Filed Memorandum Decision Accordingly, we deny pltff's motion for summary and grant defts' motion to dismiss.....So Ordered.....MAC MAHON.J.
9-1-77	35.	Filed Pltff's. notice of appeal to the U.S.C.A. 2nd circuit from the order of this court dated 08-26-77 denying pltff's. motion for summary dismissing on the cout's own motion pltff's complaint. Mailed copy to Robert Graham USA 9-2-77

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
BY _____
Deputy Clerk

A-B

Office

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

WAN SHIH HSIEH,

Plaintiff.

-against-

COMPLAINT

MAURICE F. KILEY, DISTRICT DIRECTOR, AND IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

----------X

Plaintiff complaining of the defendants by her attorney, alleges:

1. This is an action for declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for a review under the Immigration and Nationality Laws and the Constitution of the United States including the Fifth and Fourteenth Amendments, of the actions of the Immigration and Naturalization Service of the U.S. Department of Justice.

2. Plaintiff is a native of China, who has become a permanent resident of the United States and is presently employed as a Chinese cook in a Chinese restaurant in New York City. Defendant Maurice F. Kiley, is the District Director of the Immigration and Naturalization Service in New York City. Defendant, Immigration and Naturalization Service and the District Director are authorized to enforce certain aspects of the Immigration and Naturalization Laws of the United States.

3. On or about February 4, 1976, the plaintiff, after having herself obtained an adjustment of status to that of permanent resident, pursuant to the United States Code, applied for adjustment of status of her children to that of permanent resident. Plaintiff's children, as a matter of law

is entitled to such adjustment of status to that of permanent resident.

4. Thereafter, as more fully set forth in the affidavit of plaintiff attached to an application for an order to show cause in this case, despite numerous applications by the American Embassy and Consulate in Taiwan to the Immigration and Naturalization Service in New York and despite numerous applications to both the District Director and the Immigration and Naturalization Service, the Immigration and Naturalization Service have refused to act pursuant to the requirements of the statutes and their responsibilities under the law, on the application of the plaintiff for permanent resident status for her children.

5. Contrary to the Administrative Procedure Act, and contrary to due process of law, and contrary to the existing practice and procedure of the Immigration and Naturalization Service, no stated reason was given for the refusal to act. and on information and belief no action was ever taken by either the Immigration and Naturalization Service, New York office, or the District Director.

6. Plaintiff's children are clearly eligible for adjustment of status and plaintiff, as petitioner, is clearly entitled to an adjudication of this application.

7. The unreasonable delays and refusals to act by the defendants in this case have caused the children of the plaintiff and the plaintiff herself, considerable harm and upset.

WHEREFORE, plaintiff requests a judgment declaring that:

a. Children of the plaintiff are eligible for adjustment of status;

b. The denial of the adjustment of status herein, is arbitrary unlawful, and contrary to law;

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c. The refusal of the District Director and the Immigration and Naturalization Service to respond to requests from the United States Counsulate and Embassy in Taiwan, and the petition of the plaintiff , and the numerous applications to both the District Director and the Immigration and Naturalization Service by both the plaintiff and her counsel, is arbitrary, unlawful, and contrary to law;

d. That the Immigration and Naturalization Service and the District Director of the New York office be ordered forthwith to provide the American Embassy and Consulate in Taiwan with the information that they request and that they be ordered forthwith to expedite processing of the change of status application and petition of the plaintiff on behalf of her children so that they may be granted permanent residence;

e. That the children of the plaintiff be granted a visa forthwith so that when they come to the United States, an adjustment of status may take place in the United States;

f. That the Immigration and Naturalization Service be enjoined from harassing plaintiff; and

g. For such other and further relief as to this Court may deem appropriate.

LAW OFFICES OF DAVID C. BUXBAUM, P.C.

By _____
David C. Buxbaum

11 Broadway, Suite 1612
New York, New York 10004
425-4347

Dated: New York, New York

August 26, 1976

RSG:gt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH,

Plaintiff,

-v-

MAURICE F. KILEY, District Director and Immigration and Naturalization Service, United States Department of Justice,

Defendants.

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

DIANNE M. WEISHEIT, being duly sworn, deposes and says:

1. I am a criminal investigator with the frauds unit of the New York Office of the United States Immigration and Naturalization Service ("Service") at 26 Federal Plaza, New York, New York. I have held this position since August, 1975.

2. In May, 1975, in addition to my normal responsibilities as a criminal investigator, I was requested to conduct an investigation on behalf of the American Consulate in Taiwan into the immigration background of the plaintiff Wan Shih Hsieh ("Hsieh") to determine whether she had acquired her permanent resident status through fraud and whether, as a result, she was ineligible to confer additional immigration benefits on her children. I am submitting this affidaviit to the Court in opposition to the motion for summary judgment to describe the progress of this investigation thus far. In pertinent part it is based upon the documents attached as exhibits as well as my experience in this and numerous other investigations.

RSG:gt -2

WITH RESPECT TO PLAINTIFF'S ALLEGATION THAT THE DELAY IN THE COMPLETION OF HER INVESTIGATION RESULTS FROM MY INEXPERIENCE

3. Before responding to the plaintiff's unsupported allegation that the Service is unreasonably delaying its investigation into her immigration history, I first will address plaintiff's unwarranted contention that part of this "delay" can be attributed to my "inexperience." (See page 3, plaintiff's memorandum in support of her motion for summary judgment). In this regard, a brief review of my experience will be useful.

4. After graduating from Cornell University, serv- in the Peace Corps, teaching under a Fullbright Teaching Fellowship and attending the John Jay College of Criminal Justice, I began working for the Service as an investigator in May, 1972. For the first six months, I received on-the-job training by participating in investigations of all types.

5. When my training period ended, I was assigned to the Service's New York general investigations division primarily to conduct background investigations on aliens who had submitted applications for immigration benefits in which no fraud was suspected. During my tenure in this division, I completed hundreds of these investigations. In addition, as a result of my educational background, experience, and the manner in which my investigations were conducted I was selected by the Service to handle two special kinds of investigations: those conducted at the request of Congressmen to determine whether an alien merits private legislation in his behalf; and those conducted under the 1972 Equal Employment Opportunity Act to determine whether the Service's hiring policies in different areas of the country are non-discriminatory.

RSG:gt

While both types of investigations necessarily require special talents, I am particularly proud of the Service's decision to designate me as an equal opportunity investigator because of the complex and sensitive nature of the investigations involved and the confidence in me the appointment reflects. (Until this year, when the manner of selection was changed to allow individuals to apply for this position, I was the only equal opportunity investigator selected for the entire New York District.)

6. In August, 1975, while retaining my designation as an equal opportunity investigator, I requested, and was granted, a transfer to my present position, criminal investigator in the frauds division of the Service's New York District Office. Under normal circumstances, a criminal investigator would be involved in a wide range of activities. However, in the past few years an enormous number of administrative applications for immigration benefits have been submitted by United States citizens or permanent resident aliens on behalf of relatives also in this country, in which either civil or criminal fraud is suspected. Due to the number of these applications and the Service's priority system for investigations, most of my time as an investigator has been spent investigating them. Consequently, since August, 1975, I have investigated hundreds of these situations and am therefore thoroughly familiar with the investigative procedures necessary to insure a fair and complete inquiry in potential fraud cases.

7. On occasion, when consistent with my schedule and the Service's priority system, I have also investigated allegations of fraud involving applications submitted to consuls outside the United States where the consul requests

RSG:gt -4

an investigation and the approval of the application depends on the continued viability of the immigration status of an individual in this country. Plaintiff's action concerns this type of lower priority investigation. (The lower priority results because aliens outside the United States have no absolute right to enter this country and therefore cannot suffer a substantial hardship if they are forced to wait additional time for the privilege of immigrating here, and because the Service is under no statutory or regulatory obligation to conduct investigations of this type.)

8. While it may be true that I have not conducted as many investigations into fraudulent situations involving applications submitted overseas as I have into similar situations arising from applications submitted in this country, the conclusion drawn by the plaintiff, that this reflects my "inexperience", is obviously incorrect. Rather it reflects the general case load for all criminal investigators which results from the Service's nationwide priority schedules for the investigation of fraud in these situations. Moreover, even if I could be considered "inexperienced" in fraud investigations involving overseas applications, this clearly would not hinder completion of the investigation into the plaintiff's alleged fraud because the investigative techniques employed in that investigation are no different from those I have utilized so successfully in the hundreds of domestic investigations I have conducted not only for the Service but also for the Congress and the Equal Employment Opportunity Commission. In short, as I hope this portion of this affidavit demonstrates, plaintiff's allegations concerning my "inexperience" are completely unwarranted and present yet another attempt by the plaintiff to obfuscate and delay my investiga-

RSG:gt

tion into the manner in which she acquired her permanent resident status. This Court should not permit such improper tactics to succeed.

WITH RESPECT TO PLAINTIFF"S ALLEGATIONS THAT THE SERVICE IS UNREASONABLY DELAYING ITS INVESTIGATION INTO THE MANNER IN WHICH PLAINTIFF ACQUIRED HER PERMANENT RESIDENT STATUS.

9. As the papers filed in this action indicate, the American Consulate's concern with Hsieh's immigration history, and consequently my investigation into that history, focuses on the truthfulness of certain recitaitons of prior employment made to support her application for permanent resident status based on her employment experience as a hinese cook. If these recitations prove to be false, then Hsieh's children will be unable to utilize her status as a basis for their applications for immigrant visas and Hsieh may eventually be subject to deportation. Through her lawyer, Hsieh has contended that the Service and I are unreasonably delaying our investigation into her permanent residence status. However, a brief comparison of the actions taken by Hsieh with those taken by the Service will demonstrate that these allegations of unreasonable delay are as unwarranted and unsupported as those concerning my lack of experience as an investigator.

10. The American Consul in Taiwan's request for an investigation into Hsieh's immigration history was received by the Service in September, 1975. As I have discussed, due to the low priority which these types of requests are assigned, it was not forwarded to me for investigation until May, 1976.

RSG:gt

11. After receiving Hsieh's file and the Consul's request for an investigation, I immediately reviewed both to determine what type of investigation was required and where it had to be conducted. (From my experience as an investigator I have found such an initial evaluation to be the most efficient and effective procedure for the orderly completion of the enormous number of investigations to which I am assigned because it enables me to segregate my pending investigations according to the geographic area in which they must be conducted and then to complete those I have set aside for a specific area whenever I have an opportunity to make a field trip to that location.)

12. From my initial evaluation it was apparent that the investigation into Hsieh's immigration history could not be completed until inquires were made with the employers listed in her application for permanent residence and, consistent with the demands in my schedule for other pending investigations, I proceeded to interview these employers. In June, 1976, I went to the address listed in Hsieh's application for the Hsin Hsin Restaurant in Brooklyn, New York. However, the current owner of the restaurant at that address was unable to provide me with any information concerning Hsieh's immigration history because the restaurant had recently changed nerships and he was unfamiliar with the prior restaurant's personnel.

13. For most of July, 1976 I was involved in an equal employment opportunity investigation in Newark, New Jersey and was unable to continue investigating any cases, including Hsieh's. On August 5, 1976, shortly after I returned from Newark, David C. Buxbaum, Esq., Hsieh's current attorney, called the Service to request that I arrange for an for an interview for Hsieh [Exhibit A]. However, at this time the only notice of appearance (form G-28) in Hsieh's file indicated that she was represented by Messrs. Pillerdorf, Nassy, Fuerstein and Lee[Exhibit B].

14. On August 9, 1976, I responded to Mr. Buxbaum's telephone call by forwarding a letter to Hsieh, asking that she meet with me at her convenience [Exhibit C] and sending a copy of this "call-in" letter to Messrs.Pillerdorf, Nassy, Fuerstein & Lee who were Hsieh's attorneys of record at that time. Pursuant to this conversation Hsieh's interview was scheduled for August 25, 1976.

15. On August 25, 1976 , Hsieh, accompanied by Mr. Buxbaum, appeared at the Service's New York office for her interview. Prior to the Commencement of the interview, Mr. Buxbaum filed form G-28 with the Service to indicate that he was now Hsieh's attorney of record [Exhibit D]. After this was done, I informed Mr. Buxbaum that the interview was being held as a result of certain information the Service had received which indicated that Hsieh had fraudulently acquired her permanent resident status and that its purpose was to take Hsieh's statement concerning her work experience in Taiwan and the United States [Exhibit E].

RSG:gt

16. As the interview began (with Mr. Tsang Fong as the Mandarin interpreter), I inquired with Hsieh about her work experience as a chef in Taiwan. Hsieh responded by stating that, while she had learned to cook in the Kuo-Bin Restaurant in Taiwan, it was a training experience and not an actual job. When I attempted to explore this distinction between training and gainful employment Mr. Buxbaum, who apparently also speaks Chinese, began challenging Mr. Fong's translation of my questions. He then asked to speak with Hsieh privately, which I permitted.

17. When Mr. Buxbaum had finished conferring with Hsieh, the interview resumed. Now Hsieh stated that she had in fact been employed at the Kuo-Bin Restaurant, and only the Kuo-Bin Restaurant, as a chef while in Taiwan [Id.] At this point I showed Hsieh her labor certification application which indicated that she had worked for over six years in the Kwok-Kong Restaurant in Taiwan [Exhibit F]. Hsieh's response was that she hadn't mentioned this other employment because she didn't realize I wanted to know [Exhibit E].

18. I then asked Hsieh how long she had worked at the Kwok-Kong Restaurant and Mr. Fong translated her answer to be "over a year". Mr. Buxbaum immediatedly objected to this translation, contending it wasn't accurate and suggested that the proper translation was "approximately over a year". The same type of interruption occurred when I attempted to ask Hsieh who operated the Kwok-Kong restaurant. Mr. Buxbaum again challenged the interpreter's word selection and suggested that it was confusing Hsieh's responses[Id.].

19. After several other instances where Mr. Buxbaum interrupted the interview by challenging the relevancy of my questions and attempting to supply Hsieh with answers to these questions, I advised Mr. Buxbaum that I would ask whatever questions I felt were relevant to my investigation and that, while he could not answer for his client, he could advise her not to answer if he felt that desirable [Id.].

20. At this point in the interview I inquired with Hsieh whether she had ever been a pedicab driver in Taiwan and she responded that she had. Immediately after this answer was given, Mr. Buxbaum again interruped the interview by challenging the relevancy of the question. This time I informed Mr. Buxbaum that this aspect of Hsieh's immigration background was crucial since the Service had received information that Hsieh's work experience in Taiwan had consisted solely of driving a pedicab and not cooking in a restaurant [Exhibit G] and that, if true, this would preclude her children from acquiring immigrant visas and could result in rescission of her lawful permanent residence [Exhibit E]. When, despite my explanation, Mr. Buxbaum continued to complain, I informed him that I could no longer conduct the interview because of his failure to cooperate and Hsieh and Mr. Buxbaum le [Id.]. The following day, August 26, 1976, Hsieh instituted this action claiming that the Service had unreasonably delayed its investigation into her immigration history [Exhibit H].

RSG:gt

21. Notwithstanding Mr. Buxbaum's conduct at the August 25, 1976 interview, the institution of this action or even Judge Wyatt's dismissal of plaintiff's order to show cause on the grounds it was "without merit", I have continued my investigation into Hsieh's background by attempting to locate and interview witnesses who whould have worked with her in the past and therefore would be able to verify the recitations of employment contained in her application for permanent residence. For example, on September 2, 1976, I interviewed Chun Ching Tsui who had been an employee at the Kwok Kong restaurant in Taiwan when Hsieh allegedly worked there but who could not recall her working there or any women working there who held positions as cooks [Exhibit I]. In fact to date not one of the people to whom I have spoken has been able to corroborate any of Hsieh's employment record. Without such corroborative evidence, if any exists, a favorable report cannot be forwarded to the American Consulate in Taiwan because of the indications of fraud now apparent in Hsieh's immigration history.

22. It is obvious that the person most able to supply corroborative evidence or to provide the location of such evidence is Hsieh herself. However, because of Mr. Buxbaum's refusal to cooperate at the August 25, 1976 interview, I have been reluctant to reschedule another interview without asurances form Mr. Buxbaum that this interview would be allowed to proceed to a conclusion without interruption. Recently Mr. Groban, the Special Assistant United States Attorney in charge of this action, requested me to schedule such an interview, despite my fears that it would not be productive. Accordingly, on May 27, 1977 I forwarded

RSG:gt

another call in letter to Hsieh and Mr. Buxbaum which requested them to appear for an interview on Tuesday, June 7, 1977 at the Service's New York office [Exhibit J].

23. The day before that interview was scheduled to take place we were notified by Mr. Buxbaum that Hsieh would be unable to appear at the interview because:

> "This case is now pending before the U.S. District Court, Southern District of New York. An interview has already been had before the same employee of the I.N.S." [Id.]."

24. On June 7, 1977 I again forwarded another call in letter to Hsieh and Mr. Buxbaum requesting them to call me to arrange a convenient time for an interview [Exhibit K]. No response has been recieved to this communication.

25. In light of the repeated attempts by the Service to continue Hsieh's interview, it is absurd to contend, as plaintiff does, that the Service is unreasonabley delaying its investigation. It is the plaintiff's refusal to submit to an interview, as demonstrated most recently in her reply to the Service's May 27, 1977 call in notice, that remains the sole obstacle to the completion of this investition. Once this interview has been conducted, I can probably conclude this investigation within two(2) months.

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RSG:gt

26. Although I am not a lawyer, the current posture of this action seems incredible to me. On the one hand the plaintiff is prosecuting this case claiming that the Service is unreasonably delaying its investigation into her immigration background while on the other hand she is steadfastly refusing to permit the Service's investigation to conclude by not submitting to an interview until this court action terminates. It is apparent that a dismissal of this action would force the plaintiff to cooperate with the Service's attempts to conclude its investigation and therefore would be in the interests of both paries. Accordingly, I respectfully request this Court to grant the Service's motion to dismiss.

Dianne M. Weisheit

DIANNE M. Weisheit

Sworn to before me this

17th day of June, 1977

Patrick H. Barth

PATRICK H. BARTH
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4526297
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

LAW OFFICES OF
DAVID C. BUXBAUM, P.C.
SUITE 510
111 BROADWAY
NEW YORK, N.Y. 10006

(212) 349-5780 425-4347

July 13, 1976

Mr. Maurice F. Kiley
District Director
United States Department of Justice
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Re: Petitioner - Wan Shih HSIEH
Beneficiaries - Yu Nien Chang, A20 812 522
Cheng Chiuo Hsieh, A20 812 520
Man Leh Hsieh, A20 812 518

Dear Mr. Kiley:

For many months we have encountered endless delays with regard to the visa applications of the above-captioned immigrants. We have written to the Travel Control Branch of the Immigration and Naturalization Service on May 19 and January 27, 1976 detailing the facts of this matter. In addition, the American Embassy in Taiwan advised us that they have also written to the I.N.S.:

> We have reviewed Mrs. HSIEH(CHANG) Wan-shih's case and have referred it to the Travel Control branch of the Immigration and Naturalization Service Office in New York. We regret that we are unable to approve the immigrant visa applications for Mrs. HSIEH's children until the I&NS has reviewed her case and advised us whether she continues to remain eligible for permanent resident status. When the I&NS replies to our memoranda of July 31, 1975 and March 15, 1976 we will process the visa applications for her children accordingly.

Apparently, the I.N.S. has not had the courtesy to reply to the American Embassy's correspondence.

8/5/76
Secretary to Mr. Buxbaum advised that Mr. Ping Lee was found employed there. She was advised to have Mr. Baumbaum submit a G-28 if he is presently representing Subject & she indicates that he would do so. ESD.

A

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
and
Immigration and Naturalization Service

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re:

WAN-SHIH, HSIEH

DATE: November 16, 1973

FILE NO.: _____

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME:				RELATIONSHIP TO I&N LAW:
Wan-Shih HSIEH				☒ PETITIONER ☐ BENEFICIARY ☐
ADDRESS: (APT NO.) J.	(NUMBER AND STREET) 14-05 Ave. Brooklyn,	(CITY) New York	(STATE)	(ZIP CODE)
NAME:				RELATIONSHIP TO I&N LAW:
				☐ PETITIONER ☐ BENEFICIARY ☐
ADDRESS: (APT NO.)	(NUMBER AND STREET)	(CITY)	(STATE)	(ZIP CODE)

Check applicable item(s) below.

☐ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia _____ (Name of court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board: _____

☐ 3. I am associated with _____, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2, whichever is appropriate.)

☒ Others (Explain fully.) I am a partner of the law firm, PILLERSDORF, NASSY, FEUERSTEIN & LEE, and maintain our office at 225 Broadway, New York, New York 10007.

Signature	Complete Address
Ping Lee	PILLERSDORF, NASSY, FEUERSTEIN & LEE 225 BROADWAY, SUITE 1902 NEW YORK, N. Y. 10007
NAME-Type or print PING LEE	Telephone number (212) 964-6710

Form G-28
(Rev. 4-15-71)N

GPO 949-907

B

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

FILE NUMBER

A20 099 709

DATE

August 9, 1976

Hsieh Wan-Shih
79-11 41 Ave
apt B 506
Elmhurst, N.Y. 11373

Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION	20 West Broadway New York Room No. 13 Floor No.
DATE AND HOUR	Kindly telephone to arrange interview
ASK FOR	Miss Weisheit 264-5334
REASON FOR APPOINTMENT	Petitions for children
BRING WITH YOU	1974 & 1975 W-2 forms, death certificate of spouse

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH YOU.
If you are unable to do so, state your reason, sign below and return this letter to this office at once.

Pillerdorf, Nassy, Fuerstein &Lee
225 Broadway
Suite 1902
New York, N.Y. 10007
att: Ping Lee

I am unable to keep the appointment because:

Very truly yours,

SIGNATURE

DATE

Form G-56
(Rev. 5-1-73) N

☐ CHECK THIS BOX WHEN COPY MAILED TO ATTORNEY OR REPRESENTATIVE FILE COPY 18

G

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re:	DATE
Man Leh HSIEH	August 24, 1976
	FILE No. A20 812 518

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME					
Man Leh HSIEH			[ ] Petitioner [X] Beneficiary	[ ] Applicant [ ]	
ADDRESS (Apt. No.)	(Number & Street)	(City)	(State)	(ZIP Code)	
74, Alley 1, Lane 53,	Fu Shan St.,	Pu Chien,	Pan Chiao, Taipei Hsien,	Taiwan	

NAME					
Wan Shih HSIEH (nee CHANG)			[X] Petitioner [ ] Beneficiary	[ ] Applicant [ ]	
ADDRESS (Apt. No.)	(Number & Street)	(City)	(State)	(ZIP Code)	
Apt. B506	79-11 - 41st Avenue	Elmhurst,	New York	11373	

Check Applicable Item(s) below:

[X] 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia

New York — Supreme Court of the State of New York (Name of Court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

[ ] 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

[ ] 3. I am associated with _____, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. *(If you check this item, also check item 1 or 2 whichever is appropriate.)*

[ ] 4. Others (Explain fully.)

SIGNATURE	COMPLETE ADDRESS
	LAW OFFICES OF DAVID C. BUXBAUM, P.C. 11 Broadway, Suite 1612 New York, New York 10004
NAME (Type or Print) David C. Buxbaum	TELEPHONE NUMBER (212) 425-4347

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: David C. Buxbaum (Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:

NAME OF PERSON CONSENTING	SIGNATURE OF PERSON CONSENTING	DATE
Wan Shih HSIEH	Wan Shih HSIEH	8/25/76

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represent is a citizen of the United States or an alien lawfully admitted for permanent residence.)

NYC 292.3
A20 029 709
A20 893 383
A20 812 518
A20 812 520
A20 812 522

August 25, 1976

MEMORANDUM TO FILE

Re: Attorney Incident: David C. Burbaum, 11 Broadway, Suite 1612, New York, N. Y., Telephone 425-1347

In a letter dated 7/13/76, David Burbaum inquired about the status of I-130 petitions filed by Hsieh Wah Shih in behalf of her three children in Taiwan. Supervisory Investigator Dornell telephonically contacted Burbaum's office on 8/3/76 and advised that according to the file, Ping Lee was the attorney of record, and that if Mr. Burbaum now represented Hsieh he should file a G-28.

On 8/9/76 a call-in letter was sent to Hsieh and a copy to Ping. There was no reply.

I telephoned Mr. Burbaum's office on 8/17/76 and told the secretary that I should like to arrange an interview as soon as possible. I added that Mr. Burbaum could file the G-28 at the time of the interview. An appointment was made for 10:00 a.m. on 8/25/76.

Burbaum and his client appeared at 9:45 a.m. on this date. Mr. Burbaum filed the G-28 and complained about how long the processing of the application was taking. When he asked about the purpose of the interview, I told him that we had received information that Subject was not an experienced chef when she received her immigrant visa and that I wanted to take a statement about her work experience in Taiwan and in the United States. I added that I was particularly interested in her present employment but that I would begin with her employment in Taiwan.

The interview began at 10:00 a.m. with Mr. Tsang Fong as the Mandarin interpreter. It immediately became apparent that Mr. Burbaum also spoke Chinese very well. When I asked the Subject if she had ever worked as a chef in a Chinese restaurant in Taiwan, she answered that she had learned to cook in one, and that it was training rather than a job. I tried to make a distinction between her working there and her being gainfully employed. Mr. Burbaum began to challenge Mr. Fong's interpretation. Mr. Fong told the attorney he was using as simple words as possible, inasmuch as the alien was an uneducated woman and that he would call his supervisor if the attorney continued to complain. At this point, Mr. Burbaum asked to speak to his client alone.

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When the interview resumed, the alien stated she had been gainfully employed in the restaurant as a chef. She then stated she had never worked in any other restaurant. I then confronted her about the labor certification application that indicated she had worked for over six years in another restaurant in Taiwan. She stated she had worked there but had not mentioned it to me because she didn't know I wanted all her employments.

When asked how long she had worked there, the answer was "over a year". The attorney once again complained that the interpreter had not given a complete translation. According to Buxbaum, the correct translation was "approximately over a year". I told him that did not in any way change the interpretation. Another dispute arose when the alien and her brother-in-law operated this restaurant. The attorney stated the interpreter was not using the correct word for "own" and that the alien was confusing it for "manage". Mr. Tang asked Buxbaum what word should be used. When Buxbaum pronounced the word, the alien immediately mentioned Chairman Fong. ~~Apparently she associated Buxbaum's pronunciation with managing economic matters for the ruling Kuomintang.~~ After both these disputes the attorney stated he had no complaints about Mr. Fong's enterprises but he was just trying to make things clearer.

I then asked the alien what her husband had done in Taiwan. The attorney questioned the relevance of the question. I informed him that it was my job to ask questions and determine their relevance, not his. He continued to object and I told him that he could not answer for his client and that if he did not cooperate, I would not continue the interview. I added he could advise his client not to answer.

When I asked the alien if she had ever worked as a pedicab driver in Taiwan, she replied in the affirmative. I then asked her when she did this work. Mr. Buxbaum once again interrupted and began challenging the question, stating it was irrelevant. I told him it was not irrelevant, since the investigation was predicated upon her having worked as a driver rather than a chef. He continued to complain. In the meantime the alien kept stating, "My husband was sick, my husband was sick", and the attorney was trying to quiet her. I informed him that the interview was terminated because of his unreasonable conduct.

I came to get my supervisor and inform him of the situation. When we returned to the interview room, both the alien and attorney had departed.

Diane Weisheit

Diane M. Weisheit, Investigator

Kwok Kong Restaurant
No. 6, 27 Lane, Cheng Tu Road
Taipei City, Taiwan

CERTIFICATE OF EMPLOYMENT

This is to certify that Mrs. Wan Shih Chang Hsieh, born on March 20th., 1931, was in our employ as chef from March 1959 to August 1965.

During the period of her service, she has faithfully attended to her duties, proving herself to be industrious and throughly reliable with a good conduct and excellent character manner.

The discontinuance of my restaurant caused her to resign, but I am pleased to recommend her to anyone who may require her service.

June, 1971

Chien Ching Tsui
President
(signed with seal)

P. S. Mr. Chien Ching Tsui is currently the co-owner of Fwa Sha Restaurant and he resides at 1985 Creston Avenue, Apt. 44N, Bronx, New York, 10453 (Telephone no. 878-2503)

This is to certify that the undersigned translated this certificate with his best knowledge and ability.

Ping Lee

Ping Lee

Sworn to before me
this 23 day of February, 1973

CARLOS B. NASSY
Notary Public, State of New York
No. 24-8102010
Qualified in Kings County
Term Expires March 30, 1974

Carlos B. Nassy

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STATEMENT

Taipei, Taiwan

March 12, 1976

I, CHANG Yu-nien, hereby state that I am presently residing at #74, Alley 1, Lane 53, Fu Shan Street, Fuchien, Panchiao, Taipei County, Taiwan, and that I voluntarily will relate m y mother's past work experience in Taiwan as follows:

My mother, HSIEH Wan-shih, departed Taiwan on October 10, 1966 and has been living in the United States as a permanent resident. Between 1954 and 1966, she supported the family by working as a pedicab driver. The pedicab was chartered by parents of some children in kindergartens and grade schools, and her job was to send the children to schools and pick them up after school every day. My father, HSIEH Kuo, also used to do the same work until he became ill and bed-ridden. My mother workedin that capacity until she left for the United States in October 1966. She also had worked as a part time Amah during the priod of 1963 to 1966 at Mrs. CH'EN Chu Ming's private residence, #44, Lane 86, Lung Chuan Street, Taipei, Taiwan. Mrs. CH'EN died in 1975. My mother's work included cleaning, washing and taking Mrs. CH'EN to her friends to play cards, and so on, but my mother did not cook for Mrs. CH'EN.

My mother, HSIEH Wan-shih, never worked as a cook in restaurants in Taiwan before she went to the United States. Apart from her work experience as a pedicab driver and as an Amah, she has never had any other job experience in Taiwan.

I further state that the above is true and correct as written.

/s/ CHANG Yu-nien
#74, Alley 1, Lane 53, Fu Shan Street,
Panchiao, Taipei County, Taiwan.

Subscribed and sworn to before Consul of the United States
on the 12th day of March, 1976.

/s/ Edward H. Winlkinson
Consul of the United States of America.

I certify that the above is a truthful translation of the original text.

Nelson Yeung, Investigator.

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G

SUMMONS IN A CIVIL ACTION (Formerly D. C. Form No. 45 Rev. (6-50)) CIV. 1 (2-64)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

76 CIV. 3687

CIVIL ACTION FILE NO. _____

Man Shih Hsieh

Plaintiff

v.

Marine F. Kiley, District Director, and Immigration and Naturalization Service, United States Dept. of Justice

Defendant

SUMMONS

Answer due

11/22/76

MLB

To the above named Defendant :

You are hereby summoned and required to serve upon Law Offices of David C. Boxhorn, P.C.

plaintiff's attorney, whose address is 11 Broadway, Rm 1612 New York, N.Y. 10004

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT,

Clerk of Court.

Deputy Clerk.

Date: August 26, 1976

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

H

Form I-215B
(Rev. 9-1-72)Y

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT

IN RE: Wan Shih Chang Hsieh FILE NO. A20 099 709
EXECUTED AT 20 W. Broadway DATE September 2, 1976
Before the following officer of the U.S. Immigration and Naturalization Service:
Dianne M. Weishet
in the Chinese language. Interpreter Tsang FONG used.

I, Chien Chung Tsui, acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding: the employees of the Kwok Kong Restaurant, Taipei

He has told me that my statement must be freely and voluntarily given and has advised me of these rights:

"You have the right to remain silent.
Anything you say can be used against you in court, or in any immigration or administrative proceeding.
You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

I am willing to make a statement without anyone else being present. I swear that I will tell the truth, the whole truth, and nothing but the truth, so help me, God.

Being duly sworn, I make the following statement: My true and complete name is Chien Chung Tsui. I am a native and citizen of China. I am a lawful permanent resident of the United States. My alien registration number is 34 108 266. I am a co-owner of the Szechuan Imperial Restaurant 228 East 45th Street, New York. In Taiwan I operated restaurants for more than 20 years. I was the representative of the Kwok Kong Restaurant in Taipei City. The restaurant was owned by a corporation. My position was the equivalent of being the president of the corporation. I don't remember the exact time I operated this restaurant since I operated 7 or 8 restaurants during this more than 20 year period. I have the information in my business records at home. I had more than 40 employees in the Kwok Kong Restaurant. At any given time, I had at least 15 cooks. In a restaurant there are 3 or 4 chief cooks, They are men. Each chief cook has some assistants under him. Some of these assistants are women. The ~~cook~~ assistant cook does what the chief cook directs. I do not remember a person named Wan Shih Chang Hsieh. This is because I had so many employees and called them by their last name only that I cannot remember. I don't have any records of the employees. I have been shown the copy of an employment letter from my firm. It may have been written by my corporation. The stamp on the letter is the stamp for the Hwa Shah Corporation which was

founded in 1970. I operated the Kwok Kong Restaurant from about 1960 until 1966 when it was dissolved.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

FILE NUMBER

A20 812 709

DATE

May 27, 1977

Wan Shih HSIEH
apt B506
79-11 41st Ave
Elmhurst, N.Y. 11373

Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION	26 Federal Plaza — Room No. — Floor No. 10
DATE AND HOUR	Tuesday, June 7, 1977 10a.m.
ASK FOR	Dianne M. Weisheit 264-5809
REASON FOR APPOINTMENT	your past and present employments
BRING WITH YOU	this letter, employment records

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH YOU.
If you are unable to do so, state your reason, sign below and return this letter to this office at once.

David Buxbaum, P.C.
11 Broadway
Suite 1612
New York, New York 10004

I am unable to keep the appointment because:
This case is now pending before the U.S. District Court, Southern District of New York. An interview has already been had before the same employee of the I.N.S.

SIGNATURE	DATE
David C. Buxbaum	June 3, 1977

Very truly yours,

Henry E. Fitzgerald

Form C-56
(Rev. 5-1-73) N

J

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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

FILE NUMBER
A20 812 709

DATE
June 7, 1977

Wan Shih Hsieh
apt B506
79-11 41st St
ELMHURST, N.Y. 11373

FINAL NOTICE

Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION	26 Federal Plaza New York, New York Room No. Floor No. 10
DATE AND HOUR	Kindly telephone to arrange interview: 264-5809, 264-5934, 264-5927
ASK FOR	Dianne M. Weisheit
REASON FOR APPOINTMENT	your past and present employments
BRING WITH YOU	this letter, employment records

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH YOU.
If you are unable to do so, state your reason, sign below and return this letter to this office at once.

David Buxbaum, P.C.
11 Broadway
Suite 1612
New York, New York 10004

I am unable to keep the appointment because:

SIGNATURE | DATE

Very truly yours,

Form G-56
(Rev. 5-1-73) N

☐ CHECK THIS BOX WHEN COPY MAILED TO ATTORNEY OR REPRESENTATIVE FILE COPY

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(27)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WAN SHIH HSIEH,

Plaintiff,

- against -

MAURICE F. KILEY, District Director, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

76 Civ. 3837 (LFM)

REPLY AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WAN SHIH HSIEH, being first duly sworn, deposes and says:

1. I am the plaintiff in this action and make this affidavit in support of my cross-motion for summary judgment, in opposition to the motion by the defendants to dismiss this action, and in opposition to the affidavit of Dianne M. Weisheit, which opposes my motion for summary judgment.

A. DEFENDANTS' MOTION TO DISMISS AND THE AFFIDAVIT OF ROBERT S. GROBAN, JR.

2. In my affidavit in support of my motion for summary judgment, I went through and analyzed the assertions of Robert S. Groban, Jr. contained in his affidavit in support of his motion to dismiss. I pointed out the numerous erroneous statements found in that affidavit and attempted to show to the Court how frivolous were the actions of the defendants in this case. I think the Court should note well that the defendants have not in any way refuted my allegations in my affidavit in support of my motion for summary judgment.

B. NEW CLAIMS BY THE DEFENDANTS

3. I make reference to the affidavit of one Dianne M. Weisheit, who asserts she is a "criminal investigator". It is interesting to note that the Immigration and Naturalization Service, an administrative agency, would have "criminal" investigators.

(a) Ms. Weisheit's Alleged Experience

4. Ms. Weisheit states that my contention that delay in this case was in part caused by her inexperience is unwarranted. Ms. Weisheit then goes on and spends three pages of an eleven-page affidavit giving us her evaluation of her own competence. Thus one would assume that the defendants rest one-fourth of their case on the experience of Ms. Weisheit. And while I believe that Ms. Weisheit is indeed lacking in experience, I do not rest one-fourth of my case on that lack of experience.

5. I do point out that according to Ms. Weisheit's affidavit, it was only in August 1975 that she was given a position which she now has as an investigator. Thus by the time she interviewed me, she only had one year of experience as an investigator in this type of situation.

6. Furthermore, Ms. Weisheit herself admits by her own self-congratulatory statements that:

> On occasion, when consistent with my schedule and the Service's priority system, I have also investigated allegations of fraud involving applications submitted to consuls outside the United States where the consul requests an investigation and the approval of the application depends on the continued viability of the immigration status of an individual in this country. (Weisheit affidavit, paragraph 7, page 4).

7. Ms. Weisheit goes on to say: "While it may be true that I have not conducted as many investigations into fraudulent situations involving applications submitted overseas. . .", she nevertheless is not inexperienced. (paragraph 8, page 4)

8. I think the fact of the matter is that the term "inexperienced" was a polite term, and I think Ms. Weisheit's lack of experience in these matters is unfortunately verified even by her own self-congratulatory affidavit.

(b) Blatant Admissions of Delay

9. The Weisheit affidavit is striking in one major respect. It points to the gross delays that have been engendered by this defendant. As Ms. Weisheit recites in paragraph 10 of her affidavit (at page 5):

> The American Consul in Taiwan's request for an investigation into Hsieh's immigration history was received by the Service in September, 1975. As I have discussed, due to the low priority which these types of requests are assigned, it was not forwarded to me for investigation until May, 1976.

What could be clearer? Almost nine months passed before this matter was even forwarded to Ms. Weisheit, according to her own words. If that is not delay, if that is not indifference to responsibility, if that is not gross neglect, if that is not an abuse of discretion, then I do not know what is.

10. Thereafter, as Weisheit's affidavit notes on pages 6 and 7, she did virtually nothing until August 5, 1976, approximately one year after the inquiry had come down from the Department of State when she received a copy of the third letter that my attorney had written to the Immigration and Naturalization Service with regard to this matter.

11. As Exhibit A to Ms. Weisheit's affidavit states clearly, my attorney had written to the Immigration and Naturalization Service in January of 1976, May of 1976, and once again in July of 1976. In addition, quite clearly, the State Department had written to the Immigration and Naturalization Service in May of

1975, July of 1975, and March of 1976. It was only after at least the sixth inquiry had been made by the State Department and my own attorney that the defendant INS in the person of Ms. Weisheit finally decided it was time to do something. All this was almost one year after the initial inquiry was sent from Taiwan.

(c) Blatant Misstatements by Defendant INS

12. On page 7 of her affidavit, Ms. Weisheit states that after almost one year of inactivity when she finally decided to do something, she contacted other attorneys. As she states:

> However, at this time the only notice of appearance (form G-28) in Hsieh's file indicated that she was represented by Messrs. Pillerdorf, [sic] Nassy, Fuerstein and Lee[Exhibit B].

Exhibit B to Ms. Weisheit's affidavit is a form G-28 filed on November 16, 1973 by that law firm. I had long since left that law firm, as Ms. Weisheit knows full well. For example, on February 4, 1975, my attorney wrote to the Immigratin and Naturalization Service with regard to my children, and fortunately forwarded the letter by certified mail, return receipt requested. That letter, which is attached hereto as Exhibit "A", indicates what forms are included therein and further says:

> Also, please find enclosed a check in the sum of $33.00 to cover the filing fee, and a notice of appearance (G-28) by our firm.

Actually, four checks totaling $33.00 were sent instead of one check. Photocopies of the front and back of those four checks are attached hereto as Exhibit "B". As Exhibit "C", I attach copies of two of the forms G-28 that were filed on February 4, 1975, on behalf of my children which were included in the original letter.

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13. I also attach the last page of the application forms for my children that were included in my petition for them (Exhibit "D"). They are dated November 4, 1975, and the address which is noted on the bottom of said forms is 111 Broadway, Suite 510, New York, New York 10006, which was the address of Mr. Buxbaum's office at that particular time.

14. Thus to claim that Mr. Buxbaum's G-28 Notice of Appearance was not on file and was not the most current one in the file is a blatantly false statement. It was not only on file but it was sent by certified mail, return receipt requested.

15. But what did Ms. Weisheit do? To engender further delay, instead of responding to my counsel, she sent a letter to me, despite the fact that I was represented by counsel, and when represented by counsel, I have been informed and believe, it is a violation of Immigration and Naturalization Service rules not to notify said counsel of any contacts with said client. Ms. Weisheit also sent a letter to my prior attorneys, who had nothing at all to do with my case, which helped to confuse matters.

16. Ms. Weisheit insisted that my attorney file another G-28 Notice of Appearance merely for the sake of harassment when he arrived at the interview I requested, despite the fact that he indicated quite clearly that his Notice of Appearance was on file.

C. THE INTERVIEW

17. Thus after more than a year's delay, at the instance of my attorney, after three letters were written by him, and letters were written by the State Department, and another attorney was deliberately contacted to attempt to obfuscate matters, I was finally permitted an interview.

(a) Assertions That I am Not a Chinese Cook

18. I wish the Court to know that I had no knowledge of what the interview was to be about. I hoped to find out why the defendant INS failed to respond to the State Department's inquiries

Ms. Weisheit's description of the interview is only less forthright than the assertion that my attorney's G-28 was not on file.

19. Ms. Weisheit has presented at least two self-serving descriptions of the interview: One in her affidavit and the other in what is alleged to be a "Memorandum to File". (Exhibit E of her affidavit). I appeared at this interview at my own instance, without having any knowledge that there were any allegations that I did anything wrong. The first thing I was hit with was a statement that there was an assertion that I had committed fraud in my application for permanent residence, which had long since been granted. I was given no information as to the basis of this allegation, where the information came from, or why it took them so long to get around to talking to me about it. The allegation was that I really was not a cook in a Chinese restaurant.

20. Fortunately, my attorney had brought with him my tax return statements. I continued work as a cook, and I work as a cook at present. It is very easy for the Immigration and Naturalization Service to check that out. I attach hereto as Exhibit "E" some of my W-2 forms for 197 , further verifying my work in the Chinese restaurant, and the fact that I am a cook. I presented the same W-2 forms, and my tax returns to the defendant INS in the person of Ms. Weisheit at the interview.

21. The fact that I work as a Chinese cook and have worked as a cook in the past is absolutely crystal clear and easily verifiable. Anyone can come to my present place of employment and inquire of all the employees, inquire at my prior places of employment, to verify my work history as a Chinese cook. I have also produced my tax returns for further verification.

22. How could I be a cook in a Chinese restaurant if I did not have experience as a cook in a Chinese restaurant? Despite the fact that I presented my tax returns, and despite the fact that there have been no denials that I have worked in all the restaurants where I obviously did work, Ms. Weisheit's point of view is explicated as follows:

> Without such corroborative evidence, if any exists, a favorable report cannot be forwarded to the American Consulate in Taiwan because of the indications of fraud now apparent in Hsieh's immigration history. (Weisheit affidavit, paragraph 21, page 10).

It is crystal clear that Ms. Weisheit, the experienced investigato believes one is guilty until proven innocent.

(b) Assertion That I Was Not a Cook in Taiwan

23. No document, no interview, and nothing in any file that Ms. Weisheit or anyone else has produced indicates there has ever been any fraud in my application. The only question that has ever arisen, according to Ms. Weisheit's affidavit and everyone else's, is the question of whether I worked as a cook while I was in Taiwan. What relevance this has escapes me. Clearly, this is a matter best investigated in Taiwan.

24. However, the reason this matter was raised is becau when my son went down for an interview to obtain his visa to the United States, the Immigration and Naturalization Service claims that it asked h.. what I did when he was a child. He answered tha I was a pedicab driver. And indeed, the facts are that I was a pedicab driver. During the relevant period, I drove a pedicab in the morning, driving children to school, and then I went to work in the restaurant. I worked as a chef in the Kwok Kong Restaurant from March 1959 until August 1965.

25. On the basis of this, Ms. Weisheit alleges that there are ". . .indications of fraud now apparent in Hsieh's immigration history." The only scintilla of anything wrong is a statement from my own son, who was a child at the time I was working as a pedicab driver and in the restaurant, namely, from 1959 to 1965. At the period of time in question, namely, 1959 to 1965, my son was approximately seven (7) years old when the period commenced, and he was thirteen (13) years old when the period ended. I might point out that my husband was a sickly man, and he has since unfortunately died from that sickness, and I was forced to hold two jobs when I was in Taiwan. My son, of course, answered honestly on the basis of what he recalled and believed at the time. He apparently either did not recall or know that I worked in a restaurant. Obviously, we did not flout the fact that I had two jobs, although I believe once my son thought about the matter, he remembered that I had more than one job.

(c) Alleged Interruptions at the Interview

26. At this interview, which was scheduled at the behest of my counsel, where I was all of a sudden charged with fraud, despite the fact that I brought along my W-2 statements and tax returns, Ms. Weisheit basically spent her time asking all sorts of irrelevant questions. For example, she asked what my husband did, as she herself admits in her own affidavit. My husband, who is long since dead, was a sickly man. How could what he did be relevant to the interview? Quite obviously, Ms. Weisheit did not know what she was doing.

27. My lawyer challenged certain questions of Ms. Weisheit as being irrelevant, such as the above question about my husband. And although I continued to answer all questions, Ms. Weisheit apparently felt that she could interrogate me about any question on any subject under the sun, irrespective of what it is, merely

because she has almost one year experience as an investigator. Clearly, we do not have what I am informed and believe is called a Star Chamber in the United States of America, which is one reason I am glad to be here. I am not subject to the interrogation of Ms. Weisheit on any subject under the sun. I came to the interview, which I pushed for, with the hope of accelerating and catalyzing the INS into action. Obviously, in Ms. Weisheit's case, this was not possible. She basically felt that I was to answer all her questions--which I did--and that my lawyer had no right to object to anything, as if I were in Russia.

(d) Termination of the Interview

28. Ms. Weisheit asked me the same question in different forms over and over again, attempting to trick me on the answers. I complained to my counsel, and my counsel himself complained of this. Nevertheless, we sat there and I answered every single question that was asked, without exception. Despite this, Ms. Weisheit, in the same manner in which she has conducted this entire case, terminated the interview.

29. This interview was not terminated by me, it was not terminated by my counsel, it was not terminated because anyone raised their voice, it was not terminated because I refused to answer any question asked--I did not. It was terminated solely and exclusively because the defendant, as represented by Ms. Weisheit, did not know and still does not know what it is doing. This is the reason mandamus is necessary.

D. ATTEMPT TO CONDUCT A NEW INTERVIEW

30. Ms. Weisheit's own affidavit indicates: ". . .I have been reluctant to reschedule another interview without assurances form [sic] Mr. Buxbaum that this interview would be allowed to proceed to a conclusion without interruption." (Weisheit affidavit, paragraph 22, page 10). Ms. Weisheit goes on to say that pursuant to Mr. Groban's (Special Assistant United States Attorney)

request, she forwarded another letter to Hsieh and Buxbaum requesting an interview on Tuesday, June 7, 1977.

31. I have already been interviewed by Ms. Weisheit. I presented her with my tax returns. I gave her evidence of the death of my husband. I answered all her questions. She terminated the interview. Now, in order to pretend that she is doing something, she all of a sudden wants to conduct another interview. After two years of nothingness and one or two brief stops at Chinese restaurants and a harassing interview with me, Ms. Weisheit, at the behest of others, is pretending that she is now interested in expediting this matter. Her expedition would be to have yet another interview. And she wants assurances that she will not be interrupted by counsel at that interview. She wants my counsel to sit there without voice to deprive me of the right to assistance of counsel and to subject myself to total inquiry in all areas of my life.

32. Ms. Weisheit's affidavit then turns humorous. She states:

> In light of the repeated attempts by the Service to continue Hsiwh's [sic] interview, it is absurd to contend, as plaintiff does, that the Service is unreasonabley [sic] delaying its investigation. It is the plaintiff's refusal to submit to an interview, as demonstrated most recently in her reply to the Service's May 27, 1977 call in notice, that remains the sole obstacle to the completion of this investigation [sic]. Once this interview has been conducted, I can probably conclude this investigation within two(2) months.

33. Ms. Weisheit, in other words, is now claiming that all the delay that went on, the termination of the interview, the failure to find anything wrong in my application, the failure to act on the State Department's requests, the failure to respond to three of my attorney's letters and three of the State Department's letters, despite the rules of the Immigration and Naturalization

38

Service, are all the result of my failure to go to yet another interview before Ms. Weisheit.

34. Well, I am informed and believe that this will not wash, that Ms. Weisheit's conjured statements of reality are most revealing. An analysis of her own affidavit, with her own self-congratulatory statements, reveals that Ms. Weisheit clearly, and the INS clearly, have not done their job. They have not done what they are supposed to do. They have blocked the possibility of my children joining me. They have not followed their own rules. They failed to answer my complaint for eight months. They have lied about whose notice of appearance was on file. They have, in other words, handled the matter in such a gross way and in such gross violation of my rights that it is required that this Court step in and mandate reasonable action. They now, in desperation, attempt to claim that they want yet another interview. Well, it is a bit late for them to show interest now.

E. SOME MORE FACTS

35. I attach hereto as Exhibit "F" a statement from my son with regard to the interview he had in Taiwan, which apparently started this problem. I herein include a translation of a portion of the attached statement of my son in English, in that the original is in Chinese:

> The respected employee of the [U.S.] consulate asked me about my mother's prior working circumstances in Taiwan. Since at the time we were all very young, I really did not know anything about my mother's real employment. I only remembered that my mother would ride a pedicab every day to deliver pupils to school, but did not bring them back from school. Since local restaurant working hours do not usually commence until after 10:00 a.m., there was no conflict with my mother's work. Since at the time my family was poor, and my father was sick in bed for many years, our entire household depended upon my mother, a single individual, for sustenance. Because of this, she used the early morning hours for additional work, but this was not her principal job.
>
> Prior to my mother going to the United States, she was in the Kwok Kong Restaurant working as a cook and had several years' work

experience there. At the time I went to the consulate I told this to the gentleman of the consulate but I do not know whether or not he recorded it.

As I have noted supra, my son was seven years old at the time I commenced work at Kwok Kong.

36. Presently I work at a restaurant now called the House of Ho at 2787 Broadway, New York, New York 10025. Previously it was known as the House of Tsai. I work there as a cook, and obviously, if the Immigration and Naturalization Service is really interested in whether or not I am a Chinese cook, they would have come here long ago, which they may have done without advising the Court, to investigate my present employment circumstances. Clearly the only interest the defendant INS now exhibits is a desire to justify two years of inertia in violation of its own rules and responsibilities.

WHEREFORE, plaintiff prays that her motion for summary judgment be granted and the defendants be ordered to report immediately to the United States Consulate in Taiwan, and that a Declaratory Judgment be entered stating that there is full and complete evidence that WAN SHIH HSIEH works in the United States of America as a Chinese cook and no evidence that she has been employed in positions other than that of a Chinese cook in the United States of America, and further, that it be ordered that this Declaratory Judgment be forwarded to the United States Consulate in Taiwan by the Immigration and Naturalization Service of the U.S. Department of Justice.

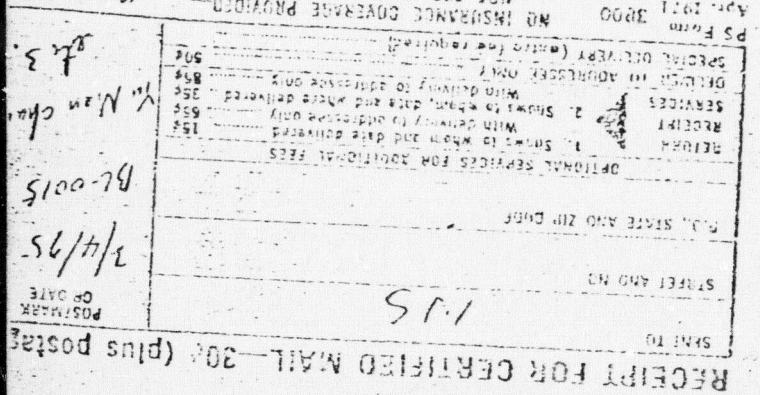
HSIEH, WAN-SHIH

WAN SHIH HSIEH (HSIEH, WAN SHIH

Sworn to before me this
24th day of June, 1977

Pamela M. Owen

PAMELA M. OWEN



No. 1097137

February 4, 1975

United Stated Dept. of Justice
Immigration and Naturalization Service
20 West Broadway
New York, N. Y. 10007

Re: Yu Nien Chang
Chang Chiuo Hsieh
Man Leh Hsieh

Dear Sir:

Please find enclosed the following forms and supporting documents with regard to the petition of Mrs. Wan Shih Hsieh for her family for an immigrant visa.

1. Form I-130
2. Form I-550
3. Form G-138
4. Extract of household registration with translation sheet attached.
5. Family photos.

Also, please find enclosed a check in the sum of $33.00 to cover the filing fee, and a notice of appearance (G-28) by our firm.

Thanking you in advance for the courtesies shown by your department, we remain,

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECK(S) IN BLOCK(S)

[ ] Show address where delivered

[ ] Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

SIGNATURE OF ADDRESSEE'S AGENT (If any)

SHOW WHERE DELIVERED (Only if requested, or if DELIVER ONLY to addressee is checked)

ARTICLE NO. 1273

REGISTERED NO.

DATE DELIVERED 2/F/45

(1) (2) (3)

Re case of Yu-Nien Chang

Very truly yours,

David C. Burbaum

"B"

"A"

LAW OFFICES OF DAVID C. BUZBAUM
111 BROADWAY, SUITE 510
NEW YORK, N.Y. 10006

1034

1-279
250

Feb 4 1975

PAY TO THE ORDER OF Immigrant Resettlement Service $10 00

Ten and 00/100 DOLLARS

Bank Leumi
TRUST COMPANY OF NEW YORK

for Yeshiva class

⑆0250⑆0279⑆ 031505658⑆01 "0000001000"

LAW OFFICES OF DAVID C. BUZBAUM
111 BROADWAY, SUITE 510
NEW YORK, N.Y. 10006

1035

1-279
250

2/4 1975

PAY TO THE ORDER OF Immigrant Resettlement Service $10 00

Ten and 00/100 DOLLARS

Bank Leumi
TRUST COMPANY OF NEW YORK

for class this week

⑆0250⑆0279⑆ 031505658⑆01 "0000001000"

LAW OFFICES OF DAVID C. HILDEBRANDT
111 BROADWAY, SUITE 810
NEW YORK, N.Y. 10006

1036

2/4 19 74 1-279/210

PAY TO THE ORDER OF Municipal Detailed Service $ 10.00

Ten only DOLLARS

Bank Leumi TRUST COMPANY OF NEW YORK

⑈0260⑈0279⑈ 03150655⑈01 "0000001000"

LAW OFFICES OF DAVID C. HILDEBRANDT
111 BROADWAY, SUITE 810
NEW YORK, N.Y. 10006

1037

2/4 19 75 1-279/210

PAY TO THE ORDER OF Municipal Detailed Service $ 3.00

Three only DOLLARS

Bank Leumi TRUST COMPANY OF NEW YORK

⑈0260⑈0279⑈ 03150655⑈01 "0000000300"

"B"

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
and
Immigration and Naturalization Service

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: Yu Nien Cheng

DATE: February 4, 1975

FILE NO.:

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME: Yu Nien Cheng — RELATIONSHIP TO (EX) (PETITIONER) [ ] (BENEFICIARY) [ ]

ADDRESS: (APT NO.) (NUMBER AND STREET) 74, Alley 1, Lane 53, Fu Shan St., (CITY) Pu Chien, (STATE) Pan Chiao, (ZIP CODE) Taipei Hsien,

NAME: Cheng Chiuo Haieh — RELATIONSHIP TO (EX) (PETITIONER) [ ] (BENEFICIARY) [X]

ADDRESS: (APT NO.) (NUMBER AND STREET) (CITY) (STATE) (ZIP CODE) Same as above

Check applicable item(s) below.

[X] 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia New York. Supreme Court of the State of New York (Name of court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

[ ] 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

[ ] 3. I am associated with the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2, whichever is appropriate.)

[ ] 4. Others (Explain fully.)

Signature: David C. Buxbaum

Complete Address: DAVID C. BUXBAUM
SUITE 510
111 BROADWAY
NEW YORK, N. Y. 10006

NAME-Type or print: David C. Buxbaum

Telephone number: (212) 349-5700

Form G-28
(Rev. 4-15-71)N

GPO 955-817 GPO : 1971 O - 421-693

"M"

44

"C"

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
and
Immigration and Naturalization Service

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re:

Man Leh Hsieh

DATE: February 4, 1975

FILE NO.:

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME	RELATIONSHIP TO ALIEN (LAW):
Man Leh Hsieh	[ ] PETITIONER [X] BENEFICIARY [ ]
ADDRESS: (APT. NO.) 74, Alley 1, Lane 53, (NUMBER AND STREET) Fu Shan St., (CITY) Pu Chien, (STATE) Pan Chiao, (ZIP CODE) Taipei, Taiwan	
NAME: Wan Shih Hsieh nee Chang	RELATIONSHIP TO ALIEN (LAW): [X] PETITIONER [ ] BENEFICIARY [ ]
ADDRESS: (APT. NO.) 8506, (NUMBER AND STREET) 79-11 41 Ave. (CITY) Elmhurst, (STATE) N. Y. (ZIP CODE) 11373	

Check applicable item(s) below.

[X] 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia New York Supreme Court of the State of New York (Name of court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

[ ] 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

[ ] 3. I am associated with the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2, whichever is appropriate.)

[ ] 4. Others (Explain fully.)

Signature	Complete Address
	DAVID C. BUXBAUM SUITE 510 111 BROADWAY NEW YORK, N. Y. 10006
NAME-Type or print: David C. Buxbaum	Telephone number: (212) 349-5730

Form G-28
(Rev. 4-15-71)IN

GPO 953-817 GPO : 1971 O - 421-9

Block I. – Information About Alien Beneficiary (Continue

1. If in the United States, where is beneficiary residing? (City) New York (State) New York

2. Beneficiary's present physical address (Apt. No.) (Number and street) (Town or city) (Province or State) (Zip Code, if any)
74, Alley 1, Lane 53, Fu Shan St., Pu Chien, Pan Chiao, Taipei Hsien

3. If beneficiary is in the United States, give the following information concerning beneficiary:

a. Last arrived in the U.S. on (Month) (Day) (Year)	b. Status when last admitted in U.S. as (Visitor, student, exchange alien, crewman, stowaway, etc.)	c. Shown on Form I-94 as: (If none, so state)

d. Present address of present employer

e. Date alien began this employment

4. Check the appropriate box below and furnish the information required for the box checked:

☐ Beneficiary will apply for a visa abroad at the American Consulate in (CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

☐ Beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at (CITY) (STATE)

If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in (CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

Block II. - Information About Petitioner

5a. Full name (Last)	(First)	(Middle)	5b. Other names used (including maiden name)
Hsieh	Wan Shih		Wan Shih Chang

6. Address in the United States (C/O, if appropriate) (Apt. No.) (Number and street) (Town or city) (State) (ZIP Code)
B506 79-11 41 Ave. Elmhurst, N. Y. N. Y. 11373

7. Address abroad (If any) (Number and street) (Town or city) (Province) (Country)
74, Alley 1, Lane 53, Fu Shan St., Pu Chien, Pan Chiao, Taipei Hsien

8. Date of birth: (Month) (Day) (Year) In: (Town or city) (State or Province) (Country)
3-20-31 Taipei, Taiwan China

9. If you are a citizen of the United States, give the following:
a. Citizenship was acquired: (Check one)

☐ by birth in the U.S. ☐ through parents ☐ through naturalization ☐ (Explain)

(1) If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of the naturalization

(2) If acquired through parentage or marriage, have you obtained a certificate of citizenship in your own or derivative right?

(a) If so, give number of certificate and date and place of issuance.

(b) If not, submit evidence of citizenship in accordance with instruction 4a (2).

b. Have you or any person through whom you claim citizenship ever lost United States citizenship?
If so, attach detailed explanation on separate sheet.

10. If you are a lawful permanent resident alien of the United States, give the following:

a. Alien Registration Number:	b. Date, place, and manner of admission for lawful permanent residence:
A 20 099 709	11-9-73, New York City P-6

c. Have you ever lost status as a lawful permanent resident? No If so, explain:

(If you are married to a citizen of the United States, read instruction 7b carefully)

11. Have you attached all required documents (see instruction No. 4)? ☒ Yes

Block III. - Oath or Affirmation of Petitioner

I swear (affirm) that I know the contents of this petition signed by me and that the statements I make are true and correct.

Signature of petitioner (See instruction No. 6) HSIEH WAN-SHIH

Subscribed and sworn to (affirmed) before me by the petitioner this 4th day of Feb. A.D. 19 75, at 111 Broadway Suite 510, N.Y. N.Y.

(SEAL) My commission expires on March 30, 19 75 (SIGNATURE OF OFFICER ADMINISTERING OATH) (TITLE)

Block IV. - Signature of Person Preparing Form, If Other Than Petitioner

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(SIGNATURE) (ADDRESS) (DATE)

I. – Information About Alien Beneficiary (Continued)

[illegible] in the United States where beneficiary will reside (City) (State)

New York New York

[illegible] which beneficiary is presently residing (Apt. No.) (Number and street) (Town or city) (Province or State) (Zip Code, if in U.S.)

74, Alley 1, Lane 53, Fu Soan St., Fu Chien Pu Chiao, Taipei Hsien, Taiwan

[illegible] is in the United States, give the following information concerning beneficiary:

a. [illegible] arrived in the U.S. on (Month) (Day) (Year)

b. [illegible] arrived in U.S. as (Visitor, student, exchange alien, crewman, stowaway, etc.)

c. [illegible]

[illegible] and address of present employer

a. Date alien began this employment

[illegible]. Check the appropriate box below and furnish the information required for the box checked:

☒ Beneficiary will apply for a visa abroad at the American Consulate in Taipei, Taiwan (CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

☐ Beneficiary is in the United States and will apply for adjustment of [illegible] to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at (CITY) (STATE)

If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in

(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

Block II. - Information About Petitioner

[illegible] is (Last) (First) (Middle)

Hsieh Wan Shih

28. Other names used; [illegible]

Wan Shih Chang

27. [illegible] in the United States at (C/O, if appropriate) (Apt. No.) (Number and street) (Town or city) (State) (ZIP Code)

B506 79-11 41 Ave. Elmhurst, N. Y. N. Y. 11373

[illegible] (if any) (Number and street) (Town or city) (Province) (Country)

74, Alley 1, Lane 53, Fu Shen St., Pu Chien, Pan Chiao, Taipei Hsien, [illegible]

[illegible] born on: (Month) (Day) (Year) in: (Town or city) (State or Province) (Country)

3-20-31 Taipei, Taiwan China

[illegible] If you are a citizen of the United States, give the following:

a. Citizenship was acquired: (Check one)

☐ through birth in the U.S. ☐ through parents ☐ through naturalization ☐ [illegible]

(1) If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of naturalization:

(2) If acquired through parentage or marriage, have you obtained a certificate of citizenship in your own name based on such acquisition?

(a) If so, give number of certificate and date and place of issuance:

(b) If not, submit evidence of citizenship in accordance with Instruction 4a. (2).

[illegible] Have you or any person through whom you claim citizenship ever lost United States citizenship?

If so, attach detailed explanation on separate sheet.

[illegible] If you are a lawful permanent resident alien of the United States, give the following:

a. Alien Registration Number: A20 099 709

b. Date, place, and means of admission for lawful permanent residence: 11-9-73, New YOrk City 2-6

c. Have you ever lost status as a lawful permanent resident alien? No If so, explain:

(If you are married to a citizen of the United States, read instruction 1b carefully)

[illegible] you attached all required documents (see instruction No. 4)? ☒ Yes

Block III. - Oath or Affirmation of Petitioner

I swear (affirm) that I know the contents of this petition signed by me and that the statements herein are true and correct.

Signature of petitioner (See Instruction No. 6) HSIEH, WAN-SHIH

Subscribed and sworn to (affirmed) before me this [illegible] day of Feb. A.D. 19 75 at 111 Broadway, [illegible] N.Y.

PING LEE
Notary Public, State of New York
No. 31-4513070
Qualified in New York County
Commission Expires March 30, 1975

(SEAL) My commission expires (SIGNATURE OF OFFICER ADMINISTERING OATH) (TITLE)

Block IV. - Signature of Person Preparing Form, If Other than Petitioner

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(SIGNATURE) (ADDRESS) (DATE)

47

Block I. – Information About Alien Beneficiary (Continued)

Address in the United States where beneficiary will reside (City) (State)
New York, New York

Address at which beneficiary is presently residing (Apt. No.) (Number and street) (Town or city) (Province or State) (Zip Code, if in U.S.)
74, Alley 1, Lane 53, Fu Shan St., Pu Chien, Pan Chiao, Taipei Hsien, Ta

If beneficiary is in the United States, give the following information concerning beneficiary:

a. Date beneficiary last arrived in the U.S. on (Month) (Day) (Year)
b. He/she entered in U.S. as (Visitor, student, exchange alien, crewman, stowaway, etc.)
c. [illegible]
d. Name and address of present employer
e. Date this employment began

Check appropriate box below and furnish the information required for the box checked:

☒ Beneficiary will apply for a visa abroad at the American Consulate in Taipei, Taiwan
(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

☐ Beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at
(CITY) (STATE)
If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in
(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

Block II. – Information About Petitioner

Name (Last) (First) (Middle)
Hsieh Wan Shih

Other names used (including maiden name if married woman)
Wan Shih Chang

Address in the United States (C/O, if appropriate) (Apt. No.) (Number and street) (Town or city) (State) (ZIP Code)
B506, 79-11 41 Ave. Elmhurst, N. Y. N. Y. 11373

Address abroad (Apt.) (Number and street) (Town or city) (Province) (Country)
74, Alley 1, Lane 53, Fu Shan St., Pu Chien, Pan Chiao, Taipei Hsien, T

Date of birth (Month) (Day) (Year) in (Town or city) (State or Province) (Country)
3-20-31 Taipei, Taiwan China

If you are a citizen of the United States, give the following:
a. My citizenship was acquired: (Check one)

☐ through birth in the U.S. ☐ through parents ☐ through naturalization ☐ [illegible]

(1) If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of naturalization:

(2) If acquired through parentage or marriage, have you obtained a certificate of citizenship in your own name based on that acquisition?
(a) If so, give number of certificate and date and place of issuance:
(b) If not, submit evidence of citizenship in accordance with Instruction No. (2).

Has any parent or any person through whom you claim citizenship ever lost United States citizenship?
(If so, attach detailed explanation on separate sheet.)

If you are a lawful permanent resident alien of the United States, give the following:

a. Alien Registration Number:
0 099 709

b. Date, place, and means of admission for lawful permanent residence:
11-9-73, New York City, F-6

Did you acquire that status as a lawful permanent resident through marriage? No If so, give name

(If you were married to a citizen of the United States, give that information also.)

Have you attached all required documents (see Instruction No. 4)? ☒ Yes

Block III. – Oath or Affirmation of Petitioner

I swear (affirm) that I know the contents of this petition signed by me and that the statements herein are true and correct.

Signature of petitioner (See Instruction No. 6) HSIEH WAN-SHIH

Subscribed and sworn to (affirmed) before me this 5th day of Feb A.D. 19 75 at 111 Broadway, Suite 510, N.Y.

PING LEE
Notary Public, State of New York
No. 31-4513070
Qualified in New York County
Commission Expires March 30, 1975

My commission expires
(SIGNATURE OF OFFICER ADMINISTERING OATH) (TITLE)

Block IV. – Signature of Person Preparing Form, If Other Than Petitioner

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(SIGNATURE) (ADDRESS) (DATE)

Wage and Tax Statement 1975

13-2845214

Copy C For Employee's Records

E

E

24 If line 22 is larger than line 20, enter amount OVERPAID	24	423 10
25 Amount of line 24 to be REFUNDED TO YOU	25	
26 Amount of line 24 to be credited on 1976 estimated tax. >	26	

If all of overpayment (line 24) is to be refunded (line 25), make no entry on line 26.

49

Wage and Tax Statement 1945

			Copy C For Employee's Records
	1 Total income tax withheld	2 Wages, tips, other compensation	3 FICA employee tax withheld	4 Total FICA wages
	0.00	1,305.00		1,674.20
		5 Wages subject to Medicare tax withholding	6	7
		130		
		8 State income tax withheld	9 State wages, tips, etc.	10 State name
		0.00	1,305.00	ILL
		11 State unemployment insurance tax withheld	12 State unemployment insurance wages	13 State disability insurance withheld
		11.00	1,305.00	NNN

Form W-2 Department of the Treasury - Internal Revenue Service

24	If line 20 is larger than line 23, enter AMOUNT OWED ▶	24	433.10
25	If line 22 is larger than line 20, enter AMOUNT OVERPAID ▶	25	433.1

敬啓者：

本人於一九七四年七月十六日到駐台的美國[illegible]，申請赴美定居手續，經過了一年多的時間，一直未獲批准。為什麼申請了一年多還不能成功呢？原來，負責審問人員是根據我[illegible]話的筆錄，作為[illegible]的，這是絕對不公平的。當時的[illegible]問話，關於家母部份，我[illegible]十數年前我童時代的模糊記憶，無法回答得詳盡，我的教育程度[illegible]自己真正的感想，同時，我也不[illegible]他們真正的記錄內容，[illegible]記錄的[illegible]。

基於人權的應該得保障，以及[illegible]充份表達，我非常[illegible]的列出下面幾點，這些真實的情形，[illegible]先生明察。

1 負責審問人員，曾問及有關家母從前在台灣的工作情形。由於當時我們都很年幼，對於家母的真正工作毫無所知，但我記得，家母每天清早要三輪車送學童至學校，而不負責放學後的接送工作。[illegible]的工作時間，通常都在十[illegible]以後，因此並不影響家母的工作[illegible]，由於[illegible]家庭[illegible]，父親長年臥病在床，一家生計，全靠家母一人[illegible]，因此利用[illegible]的兼份工作，[illegible]主要工作。

2 家母在赴美前是在本地[illegible]光飯店任[illegible]工作，有[illegible]的工作[illegible]。在[illegible]，我曾[illegible]先生，但不知他們是否有[illegible]記錄。

3 第二次[illegible]時有一位[illegible]人[illegible]，我[illegible]多少[illegible]，不懂英文，他們對我說，不知是什麼，[illegible]什麼，[illegible]。然而不知他們用一種不正當的方法與手段，[illegible]我們的[illegible]。[illegible]本人[illegible]。家母[illegible]三個[illegible]，[illegible]，但[illegible]工作只是[illegible]，用來[illegible]幼[illegible]及支付丈夫的[illegible]，[illegible]生活下去。

4 家母赴美後不久，又從事[illegible]工作，[illegible]。目前任職於

何家[illegible] (House of H.) Chinese Restaurant 2787 broadway
(Bet. 107 & 106 street) New York N.Y. C. 10025

F

繼任大廚工作，請就地簽證。

美國是自由民主法治的國家，尊重人權，保障民意，希望主管當局公平、合理的處理這件案子，俾早日使我們能和分別十餘年的家屬團聚，享受天倫之樂。謝謝　！

敬

以　馬　內　利

張　侑　平

一九七六年九月廿一日

NOTICE OF ENTRY

e-Please take notice that the within is a (certified)
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ted,
Yours, etc.,

torney for
Office and Post Office Address

o

ttorney(s) for

NOTICE OF SETTLEMENT

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or settlement to the Hon.

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Dated,
Yours, etc.,

ttorney for
Office and Post Office Address

To

Attorney(s) for

CIVIL ACTION NO. 76 CIV. [illegible]
Index No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH,

Plaintiff,

v

MAURICE F. KILEY, District Dir
IMMIGRATION AND NATURALIZATION
SERVICE, UNITED STATES DEPARTM
OF JUSTICE,

Defendants

NOTICE OF CROSS-MOTION

LAW OFFICES OF DAVID C. BUXBAUM

Attorney for Plaintiff

Office and Post Office Address, Telephone
11 Broadway, Suite 1612
New York, New York 10004
(212) 425-4347

To ROBT. B. FISKE, JR., ESQ., U.S.
One St. Andrews Plaza Annex
New York, New York 10007
Attorney(s) for Defendants

Service of a copy of the within

is hereby ad

Dated,

Attorney(s) for

August 26, 1977

Notwithstanding the numerous decisions of this date granting pleas to defendants' motions for summary judgment,

Lloyd F. MacMahon
U.S.D.J.

(34)

J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH,	:	
Plaintiff,	:	76 Civ. 3837 (LFM)
-against-	:	MEMORANDUM
MAURICE F. KILEY, District Director and IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,	:	
Defendants.	:	

MacMAHON, District Judge.

Defendants move to dismiss this action and plaintiff cross-moves for summary judgment.

This controversy stems from the efforts of plaintiff, a resident alien, to have immigrant visas issued to her three children who reside in Taiwan, Republic of China.

Plaintiff entered the United States on September 20, 1966 and became a permanent resident alien

on November 9, 1973. The adjustment of her status to a permanent resident alien was based in part on the approval of a petition granting her sixth preference status pursuant to Section 203(a)(6) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1153(a)(6), which confers priority in the allocation of immigrant visas on qualified immigrants who are capable of performing specified types of labor for which a shortage of persons exists within the United States.

Thereafter, she filed petitions with the Immigration and Naturalization Service ("INS") seeking second preference status for her children pursuant to Section 203(a)(2) of the Act, 8 U.S.C. § 1153(a)(2), conferring priority on the unmarried children of a lawfully admitted resident alien in the allocation of immigrant visas. Based on INS approval of their preference status on April 9, 1975, the children applied to the Consul for immigrant visas on July 15, 1975.

In processing the children's visa applications, the Consul discovered that plaintiff may have obtained her resident alien status fraudulently by misrepresenting her former employment in Taiwan. The Consul suspended

action on the children's visa applications pending an investigation of the alleged fraud and recommendation by INS concerning the institution of proceedings to rescind plaintiff's resident alien status. See Section 246 of the Act, 8 U.S.C. § 1256. The rescission of that status would, of course, preclude plaintiff's conferral of immigration benefits on her children.

Although INS received the Consul's request in September 1975, the matter was not assigned for investigation until May 1976. INS contends this substantial delay was due to the low priority assigned to investigation requests involving alleged fraud in applications submitted to Consuls abroad.[1]

Plaintiff instituted this action on August 27, 1976 after sending two letters of inquiry to INS concerning her children's visa applications and after an interview on August 25, 1976, which was terminated by the INS investigator due to alleged disruptive influence of plaintiff's attorney. Plaintiff, in essence, seeks a writ of mandamus, pursuant to 28 U.S.C. § 1361, or a mandatory injunction under Section 10(a) of the Administrative Procedure Act, 5 U.S.C. § 702: (1) ordering the Consul

to issue the immigration visas or (2) ordering INS to complete the investigation and furnish the Consul with the requested report which would, if favorable, permit the Consul to issue the visas. Alternatively, she seeks a court order granting visas to her children so that adjustment of their status to permanent resident aliens could take place in the United States. She also seeks a declaratory judgment that her children are eligible for adjustment of status and that the failure of INS to respond to the Consul and to her petition for her children is illegal and arbitrary. Finally, she seeks to enjoin INS from harassing her.

A consular officer is the only official who can issue a visa to aliens seeking admission to this country, see Section 221 of the Act, 8 U.S.C. § 1201, and we lack jurisdiction to review his decision to deny a visa. See Gomez v. Kissinger, 534 F.2d 518, 519 (2d Cir. 1976); Pena v. Kissinger, 409 F. Supp. 1182, 1186-88 (S.D.N.Y. 1976). Accordingly, we must dismiss plaintiff's complaint insofar as it seeks (1) to have us issue visas; (2) a writ of mandamus or mandatory injunction ordering the Consul to issue the visas; or (3) a declaratory judgment that

her children are entitled to visas.

We also dismiss plaintiff's complaint insofar as it seeks a declaratory judgment that her children are eligible for adjustment of status and that the denial thereof is arbitrary and Illegal. The Attorney General is authorized to adjust the status of certain nonimmigrant aliens, who were inspected and are presently within the United States, to the status of lawful permanent resident aliens. Section 245 of the Act, 8 U.S.C. § 1255. Since plaintiff's children are not presently within the United States, have not been inspected nor admitted as required by law, and are applying for immigrant visas abroad, they cannot apply for adjustment of status under 8 U.S.C. § 1255 even if they were otherwise eligible for that extraordinary relief. See Bagamasbad v. Immigration and Naturalization Service, 531 F.2d 111, 114 (3d Cir. 1976).

The rule restricting our appellate jurisdiction, enunciated in Gomez and Pena, supra, does not apply insofar as plaintiff seeks a writ of mandamus or a mandatory injunction directed to INS, and to that extent the matter is open to our review. Before a writ of mandamus may

properly issue, however, plaintiff must show (1) that she has a clear right to the relief sought; (2) that there is a plainly defined and peremptory duty on the part of the defendant to do the act in question; and (3) that no other adequate remedy is available. Lovallo v. Froehlke, 468 F.2d 340, 343 (2d Cir. 1972), cert. denied, 411 U.S. 918 (1973). Alternatively, mandamus may also be appropriate when official conduct has gone beyond any rational exercise of discretion. See Leonhard v. Mitchell, 473 F.2d 709, 713 (2d Cir.), cert. denied sub nom. Leonhard v. Richardson, 412 U.S. 949 (1973). However, even under the latter test, plaintiff must show that a government official owes her a duty. Id.

INS contends that it owes no duty to plaintiff because there is no application by plaintiff before INS. That contention is factually incorrect. Plaintiff has filed preference status petitions on behalf of her children and it is her alleged fraud as it relates to those petitions that prompted the subject investigation. Moreover, the statutory scheme and the regulations of INS relating to the revocation of preference petitions establish its duty to conduct the investigation. See Feliciano v.

Laird, 426 F.2d 424, 427-29 (2d Cir. 1970). INS has a duty under 8 C.F.R. § 204.3 to forward an approved petition to the consulate designated by the petitioner if the beneficiary of an approved petition applies for a visa.[2] Furthermore, under 22 C.F.R. § 42.43(a), a consular officer must suspend action in a preference status petition case and return the petition, with a report of the facts, for reconsideration by INS if he has reason to believe that the approval of the petition was obtained by fraud.[3] INS is authorized by 8 C.F.R. § 205.2 to revoke the approval of a preference status petition if the propriety of such revocation "is brought to the attention of the Service, including requests for revocation or reconsideration made by consular officers."[4] Finally, 8 C.F.R. § 205.3 provides in part:

> "Revocation of approval of a petition . . . shall be made only upon notice to the petitioner [here plaintiff] who shall be given an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. If upon reconsideration the approval previously granted is revoked, the petitioner shall be informed of the decision with the reasons therefor and shall

> have 15 days after the service of the notification of decision within which to appeal as provided in Part 3 of this chapter,[5] if the petition was filed for a preference under paragraph . . . (2) . . . of Section 203(a) of the Act. . . ."

Plaintiff's petition was filed pursuant to that paragraph.

These sections, read together, obviously contemplate investigation by INS of a fraudulently obtained preference status. They not only provide for referral of petitions to INS for investigation, but also guarantee the petitioner certain procedural rights in revocation proceedings, including the right to offer evidence and to appeal. Moreover, we think the position that INS is under no duty to conduct such investigations in inequitable and unreasonable. The visas cannot be obtained until the preference petitions are approved, and the preference petitions will not be approved until the investigation is completed. If INS is under no duty to complete the investigation, then plaintiff is left in an administrative limbo. The regulations cannot be read to permit such an administrative Catch-22.

Furthermore, the failure of INS to take action regarding preference petitions would constitute a de facto deprivation of plaintiff's right to appeal bestowed by 8 C.F.R. § 205.3. The contention that INS owes no duty to plaintiff to conduct investigations into the status of permanent resident aliens because no statutes or regulations impose such a duty is disingenuous. Plaintiff's status as a resident alien is relevant in this action only insofar as her alleged fraud in its procurement may form a derivative basis for the revocation of her children's preference status. The above regulations, specifically 8 C.F.R. §§ 205.2, 205.3 and 22 C.F.R. § 42.43, plainly provide for I investigation in that area.

Failure to conduct an investigation of plaintiff's alleged fraud would not prejudice her if the results of such investigation were to be used solely in possible proceedings to rescind her resident alien status for she could continue to hold that status. The situation is entirely different here, however, where the Consul has suspended action on her children's visa applications pending an investigation of plaintiff's alleged fraud in the procurement of her resident alien status as it relates

to the possible revocation of her children's preference status. Plaintiff is seriously prejudiced because the Consul will not issue the visas until the investigation is completed, and she is deprived of her children in the interim.[6]

Although we have determined that INS does owe a duty to plaintiff to complete the investigation, the discharge of that duty obviously involves considerable discretion. Even though we might hesitate to characterize that duty as "peremptory," see Iovallo v. Froehlke, supra, 468 F.2d at 343, nevertheless, INS is still properly subject to a writ of mandamus if its conduct has gone "far beyond any rational exercise of discretion." Leonhard v. Mitchell, supra, 473 F.2d at 713. See Iovallo v. Froehlke, supra, 468 F.2d at 346; Nixon v. Secretary of the Navy, 422 F.2d 934, 939 (2d Cir. 1970).

Furthermore, the conduct of INS is reviewable under Section 10(a) of the Administrative Procedure Act, 5 U.S.C. § 702, entitling a person suffering a legal wrong, or adversely affected or aggrieved by agency action to judicial review.[7] See Pena v. Kissinger, supra, 409 F.2d

at 1186, 1187; Rumahorbo v. Secretary of Labor, 390 F. Supp. 208, 209 (D.D.C. 1975). A "legal wrong" is the invasion of a legally protected right, see Pennsylvania R.R. v. Dillon, 335 F.2d 292, 294 (D.C. Cir.), cert. denied sub nom. American-Hawaiian S.S. Co. v. Dillon, 379 U.S. 945 (1964), or, in other words, the breach of a legal duty owed to the plaintiff. See Black Hotel Co. v. Froehlke, 351 F. Supp. 956, 958 (W.D. Ok. 1972).

We have already determined that INS owes plaintiff a legal duty to complete the investigation, and if INS unlawfully withholds or unreasonably delays the completion of that investigation, then the issuance of a mandatory injunction is proper. See Section 10(e)(1) of the Administrative Procedure Act, 5 U.S.C. § 706(1).

Thus, we are confronted with the identical issue under 28 U.S.C. § 1361 as we are under Sections 10(a) and (e) of the Administrative Procedure Act, i.e, whether INS has abused its discretion in failing to complete the investigation. While plaintiff asserts that the failure of INS to complete the investigation is arbitrary, unreasonable and illegal, we cannot conclude that INS has

abused its discretion or acted arbitrarily, unreasonably or illegally in light of INS' response that it is conducting the investigation as rapidly as possible considering the low priority given to such investigations and the other prior investigative responsibilities of INS. Nor can we find any basis under all of the circumstances supporting plaintiff's claim that INS is harassing her.

Accordingly, we deny plaintiff's motion for summary judgment and grant defendants' motion to dismiss.

So ordered.

Dated: New York, N. Y.
August 24 1977

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

Wan Shih Hsieh v. Kiley 76 Civ. 3837 (LFM)

FOOTNOTES

1 Defendant purportedly assigns lower priority to investigation requests involving applications submitted to Consuls abroad than to those involving applications for immigration benefits submitted on behalf of aliens within the United States because aliens outside the United States, having no absolute right to enter this country, cannot suffer a substantial hardship by being forced to wait additional time for the privilege of immigrating here.

2 "§ 204.3 Disposition of approved petitions.

If the beneficiary of an approved petition will apply to an American consulate for a visa, the approved petition shall be forwarded to the consulate designated by the petitioner.

When the beneficiary of an approved petition will file an application for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service for consideration in connection with that application."

3 "§ 42.43 Suspension or termination of action in petition cases.

(a) Suspension of action. (1) The consular officer shall suspend action in a petition case and shall return the petition with a report of the facts in the case, for reconsideration by the Service if the petitioner requests suspension of action, or if the consular officer knows or has reason to believe that the approval of the petition was obtained by fraud, misrepresentation, or other

unlawful means, or that the beneficiary is not entitled, for any other reason, to the status approved.

(2) When a third or sixth preference petition is automatically revoked because of the expiration of the beneficiary's labor certification, the consular officer shall suspend action in the case and shall retain the petition while affording the beneficiary an opportunity to seek revalidation of the labor certification or to obtain a new labor certification.

(b) Termination of action. The consular officer shall terminate action in a petition case upon receipt from the Service of notice of the revocation of the petition or upon a finding that the petition has been automatically revoked pursuant to 8 CFR 205.1(a) or to 8 CFR 205.1(b)(2) through (5)."

4 "§ 205.2 Revocation on notice.

The approval of a petition made under section 204 of the Act and in accordance with Part 204 of this chapter may be revoked on any ground other than those specified in §205.1 by any officer authorized to approve such petition when the propriety of such revocation is brought to the attention of the Service, including requests for revocation or reconsideration made by consular officers."

5 Part 3 establishes procedures governing appeals to the Board of Immigration Appeals.

6 Plaintiff, as a permanent resident alien, is entitled to the full panoply of constitutional protection. See Pena v. Kissinger, supra, 409 F. Supp. at 1187.

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Although 5 U.S.C. § 702 is not an implied grant of subject matter jurisdiction, we have jurisdiction to review the INS' conduct pursuant to 28 U.S.C. § 1331(a) (as amended). The 1976 amendment to this section eliminated the requirement of a specified amount-in-controversy as a prerequisite to the maintenance of an action against an agency of the United States, or any officer or employee thereof in his official capacity. See Califano v. Sanders, 45 U.S.L.W. 4209, 4210 (U.S. Feb. 23, 1977).

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH, Plaintiff,	
-against-	AFFIDAVIT IN OPPOSITION TO ORDER TO SHOW CAUSE
MAURICE F. KILEY, DISTRICT DIRECTOR AND IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	76 Civ. 3837 (IBW)

STATE OF NEW YORK :
SS.:
COUNTY OF NEW YORK :

MARY P. MAGUIRE, being duly sworn, deposes and says:

1. I am a Special Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York. I submit this affidavit in response to the order signed by the Court on August 27, 1976 directing the defendants to show cause why this court should not order the defendants to "respond immediately to inquiries from the American Embassy in Taiwan regarding the application for permanent residence of the plaintiff's children; respond to letters sent to them by the plaintiff's attorney; cease their

unreasonable and inordinate delaying of the application for permanent residence of the plaintiff's children; and cease their harrassment of the plaintiff." This affidavit is based on the administrative file of the Immigration and Naturalization Service (the "Service") relating to the plaintiff Wan Shih Hsieh.

2. The plaintiff, Wan Shih Hsieh, is a forty-five year old native and citizen of Taiwan, Republic of China. She first entered the United States on September 20, 1966 on a nonimmigrant visa as an employee of a United Nations official. Her husband and their three children continued to reside in Taiwan and did not accompany Mrs. Hsieh to the United States.

3. On November 9, 1973 Mrs. Hsieh was granted an adjustment of her status from that of a nonimmigrant to that of a lawful permanent resident pursuant to Section 245 of the Immigration and Nationality Act (the "Act"), 8 U.S.C. §1255. She satisfied the statutory requirements for such adjustment of status in part because she was the beneficiary of an approved sixth preference visa petition which was, in turn, based on a labor certification issued by the Secretary of Labor pursuant to Section 212(a)(14) of the Act, 8 U.S.C. §1182(a)(14).

4. The labor certification was issued on April 11, 1973 on the basis of Mrs. Hsieh's alleged qualifications and prior experience as a specialty chef for the preparation of Chinese foods (Exhibit A). In support of her application for labor certification Mrs. Hsieh, through her then attorney of record, submitted as evidence of her prior experience as a specialty chef a certificate of employment signed by Chien Ching Tsui who stated that Mrs. Hsieh has been employed by his restaurant, the Kwok Kong Restaurant in Tapei City, Taiwan, as a chef from March, 1959 to August, 1965 (Exhibit B). The issuance of the labor certification was made on the basis of an application filed by the Hsin Hsin Chinese Restaurant in Brooklyn, New York. Mrs. Hsieh had purchased stock in the restaurant on January 3, 1973 (Exhibit C).

5. On August 9, 1973 the Service approved a petition filed by the Hsin Hsin Restaurant on behalf of Mrs. Hsieh. The approval of the petition accorded Mrs. Hsieh the status of a sixth preference immigrant under Section 203(a)(6) of the Act, 8 U.S.C. §1153(a)(16) (Exhibit D).

6. On August 24, 1973 Mrs. Hsieh filed an application for status as a permanent resident (Exhibit E). The application was granted and Mrs. Hsieh's status was

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adjusted to that of a lawful permanent resident on November 9, 1973 (Exhibit F).

7. Subsequent to her adjustment of status Mrs. Hsieh submitted visa petitions on behalf of her three children who reside in Taiwan. The approval of the petitions on April 9, 1975 accorded the children status as second preference immigrants under Section 203(a)(2) of the Act, 8 U.S.C. §1153(a)(2). Based on the Service's approval of the visa petitions, Mrs. Hsieh's three children applied for immigrant visas at the United States Consulate in Taipai, Taiwan. The application was apparently made through plaintiff's present attorney by letter dated July 15, 1975 to the Visa Section of the United States Embassy at Taipai, Taiwan. There was apparently some question as to whether plaintiff's attorney had submitted the proper documents to the Embassy (see Exhibits E and F attached to plaintiff's affidavit). Although the consul advised plaintiff's attorney by letter dated July 28, 1975 that second preference visa petitions should be filed on behalf of the plaintiff's children, plaintiff's attorney did not respond to that inquiry until December 19, 1975 (see Exhibit G attached to plaintiff's affidavit).

8. By memorandum dated July 31, 1975 the American Consul in Taipai, Taiwan advised the Service's

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District Director at New York that plaintiff's adjustment of status appeared questionable in view of the fact that her household register did not reflect her alleged employment at the Kwok Kong Restaurant (Exhibit G). The consul did not request the Service to take any action other than to forward copies of plaintiff's application for an adjustment of status and some documentation of her previous nonimmigrant status.

9. On March 12, 1976 plaintiff's oldest child, a twenty-five year old son, was interviewed by the American Consul at Taipei, Taiwan. He executed a sworn statement in Chinese in which he stated that his mother had never worked as a chef in Taiwan before she left for the United States in 1966. Instead, the son, Chang Yu-nien stated that his mother had worked as a pedicab driver who transported schoolchildren between their homes and their schools (Exhibit H).

10. By memorandum dated March 15, 1976 and received by the Service on April 4, 1976, the American Consul at Taipei, Taiwan requested the Service at New York to review plaintiff's immigration status in view of the statement made by her son (Exhibit H). The consul's memorandum indicated that the visa applications of plaintiff's children would be held in abeyance pending receipt

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of the Service's decision with respect to the possible institution of rescission proceedings against plaintiff.

11. The investigation of plaintiff's case was assigned to Service Investigator Dianne Weisheit. On August 3, 1976 Investigator Weisheit visited the premises in Brooklyn, New York where the Hsin Hsin Chinese Restaurant was located according to the information on the labor certification application. She interviewed one Dick Fung Yung who stated that he owned and operated the restaurant presently located at the address since June 1975 and that he had no knowledge with respect to the ownership or names of any Chinese restaurants which might previously have occupied the premises.

12. On August 5, 1976 Supervisory Investigator Edward Dornell telephoned the office of David Buxbaum, who represents plaintiff in this action. The telephone call was in response to a letter dated July 13, 1976 to the Service from Mr. Buxbaum in which he complained of the Service's lack of action with respect to the visa applications (Exhibit J). Despite Mr. Buxbaum's assertions that he had previously written to the Service on January 27, 1976 and on May 19, 1976, plaintiff's Service file does not contain those letters nor do the Service file of her children contain the letters.

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13. At the time Supervisory Investigator Dornell telephoned Mr. Buxbaum's office on August 5, 1976 he advised Mr. Buxbaum's secretary that plaintiff's Service file did not contain a notice of appearance filed by Mr. Buxbaum (form G-28) but did contain a notice of appearance filed several years earlier by one Ping Lee. Mr. Buxbaum's secretary was advised by Mr. Dornell that Mr. Buxbaum should submit a notice of appearance in accordance with 8 C.F.R. 292.4. The notices of appearance dated February 4, 1975 (see Exhibit M attached to plaintiff's affidavit) were filed on behalf of plaintiff's children in the visa petition proceedings.

14. On August 9, 1976 a letter was sent to plaintiff at the last address shown in her file with a copy to Ping Lee, the attorney of record (Exhibit N). The letter requested that plaintiff telephone Ms. Weisheit to arrange for an interview. When no response was forthcoming Ms. Weisheit telephoned Mr. Buxbaum's office on August 17, 1976, although he had not yet submitted a notice of appearance, and arranged an appointment for August 25 at 10:00 a.m. Mr. Buxbaum's secretary was advised that he could file a notice of appearance at that time.

15. Plaintiff and Mr. Buxbaum appeared on August 25, 1976 and Buxbaum filed a notice of appearance.

Ms. Weisheit then attempted to interview and take a statement from plaintiff through a Service interpreter, but the interview was frustrated by Mr. Buxbaum's continued interruptions and challenges to the relevancy of Ms. Weisheit's questions to plaintiff (see Exhibit E attached hereto). The interview was terminated by Ms. Weisheit and plaintiff and her attorney left the Service office.

16. On August 27, 1976 this action was commenced by an order to show cause in which plaintiff apparently seeks relief in the nature of mandamus. Specifically, plaintiff seeks an order from the Court directing the defendants (1) to respond "immediately" to inquiries from the American Embassy in Taiwan; (2) to respond to letters sent to them by plaintiff's attorney; (3) to cease their "unreasonable and inordinate delaying of the application for permanent residence of the plaintiff's children"; and (4) "cease their harrassment of the plaintiff". Defendants respectfully submit that a review of the facts in this case will show that defendants have acted properly and with all possible promptness in this case and have not in any way harrassed plaintiff.

17. With respect to plaintiff's request for an order directing the defendants to "immediately" respond to the consul's inquiry, it is submitted that such

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response cannot be made until the Service can determine whether or not plaintiff obtained her adjustment of status by fraud and as such is subject to have her lawful permanent residence status rescinded. That possibility of a rescission proceeding was not even made apparent to the Service until April 2, 1976 when it received the consul's memorandum of March 15, 1976. To date almost all attempts to determine whether plaintiff provided fraudulent experience records in obtaining her adjustment of status have been frustrated. Plaintiff did not respond to the August 9th notice sent her by the Service. This may be explained by the fact that plaintiff has apparently moved from the address shown in Service records and plaintiff did not so advise the Service as she is required to do by Section 265 of the Act, 8 U.S.C. §1305, and 8 C.F.R. §265.1. The interview on August 25, 1976 was terminated because of the conduct of plaintiff's attorney. The documents requested by the Service in the letter of August 9th and which plaintiff's attorney was told to submit in the telephone call of August 17, 1976 have never been submitted to the Service. The Service's investigation of plaintiff's status has continued and on September 2, 1976 Ms. Weisheit interviewed Chien Ching Tsui, who had executed the certificate of employment upon which plaintiff's prior experience as a chef was based. Mr. Tsui was unable to

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recall Mrs. Hsieh or the execution of the certificate of employment on her behalf. It is submitted that there is a serious question of possible fraud in Mrs. Hsieh's adjustment of status and that the Service, while taking all necessary steps in a prompt and expeditious manner, has the duty and responsibility of determining whether rescission proceedings should be instituted. Plaintiff's attorney apparently realized that Ms. Weisheit's questioning of his client with respect to her work experience in Taiwan might uncover facts not revealed at the time of her adjustment of status and which would cast serious doubts on her status adjustment. Therefore, rather than to permit the questioning to continue he disrupted the interview and now seeks an order from this Court which would cut short the Service's investigation.

18. It is submitted that plaintiff's request for an order directing the defendants to respond to letters sent them by plaintiff's attorney is totally without merit. The Service file relating to the plaintiff contains only one letter from plaintiff's attorney dated July 13, 1976. The Service has certainly responded to that letter by seeking to interview plaintiff and by otherwise conducting an investigation into the plaintiff's adjustment of status.

19. Plaintiff further requests that defendants be ordered to "cease their unreasonable and inordinate

delaying the application for permanent residence of the plaintiff's children". It should be noted that there is no application of any kind presently pending before the Service on behalf of either plaintiff or her children. The only applications which are pending are the visa applications of plaintiff's children which are before the consul in Taiwan. The Service has no jurisdiction over those visa applications. Furthermore, the Service has become involved in this matter only at the request of the consul who asked the Service to conduct the investigation, which it has understaken to do in what is certainly a reasonable and prompt manner. The investigation has been hampered by plaintiff's failure to advise the Service of her change of address; by her failure to submit the documents requested by the Service (W-2 forms and tax returns for 1974 and 1975 and her husband's death certificate); and by her attorney's conduct at the August 25, 1976 interview which effectively cut off the Service's line of inquiry into plaintiff's employment in Taiwan.

20. Finally, plaintiff requests an order directing the defendants to "cease their harrassment" of her. It is submitted that the record does not bear out plaintiff's contention that she is being harrassed by defendants. Plaintiff, an alien, sought and received an immigration benefit from the Service. It now appears that her adjustment of status may have been procured by fraud.

The Service has the statutory duty to determine if her adjustment of status may be subject to rescission. Section 246 of the Act, 8 U.S.C. §1256. In carrying out that duty the Service has done no more than seek to interview plaintiff and to obtain information about her employment in Taiwan and her employment in the United States subsequent to her adjustment of status. The investigation is not based on "some unsubstantiated allegation by someone" as plaintiff alleges in paragraph 12 of her affidavit. Rather, it was prompted by a sworn statement of her son in which he stated that his mother had never worked as a chef in Taiwan. Perhaps plaintiff's attorney realizes the possible implications of the defendants' actions with respect to plaintiff's immigration status and hopes to curtail defendants' investigation before the Service has enough evidence to institute rescission proceedings.

21. Defendants respectfully submit that plaintiff's motion for an order in the nature of a writ of mandamus should be denied. Mandamus is an extraordinary remedy, governed by equitable considerations, which should be granted only in the clearest, most compelling cases. See Whitehouse v. Illinois Central Railroad Company, 349 U.S. 366 (1954). The courts have repeatedly stated the permissible perimeters of mandamus jurisdiction. See Schonbrun v. Commanding Officer, 403 F.2d 371 (2d Cir. 1968),

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cert. denied, 394 U.S. 929 (1969); Nixon v. Secretary of the Navy, 422 F.2d 934 (2d Cir. 1970); Feliciano v. Laird, 426 F.2d 424 (2d Cir. 1970). In Leohard v. Mitchell, 473 F.2d 709, 712 (2d Cir. 1973), the Second Circuit reviewed mandamus jurisdiction in actions to compel officials or employees of the federal government to perform a duty owed to plaintiff. The Court stated that jurisdiction was proper solely to compel officials to comply with the appropriate law when no judgment or discretion is involved in that compliance. In citing that traditional rule the Court stated a writ of mandamus might properly be issued if an official fails to comply with a specific statutory directive or regulatory direction, or, if official conduct has gone far beyond any rational exercise of discretion. Quite simply, there is no statutory directive or regulatory direction which imposes any duty on defendants with respect to this plaintiff. There is no application of plaintiff presently pending before defendants. The investigation being conducted by defendants certainly was not initiated by any application or petition which plaintiff filed with defendant. Therefore, it is submitted that mandamus jurisdiction does not lie in this case.

22. It is noted that the order to show cause is supported by affidavits of plaintiff and her attorney. Neither affidavit states the basis of this Court's juris- 81

MPM:ml
76-2834

8 2

diction. Defendants have not been served with a summons and complaint in this action. Consequently, defendants are not aware of whatever jurisdictional basis is alleged by plaintiff. Defendants have read plaintiff's motion papers as seeking an order directing defendants to act, i.e., a mandamus action.

23. Finally, defendants suggest that plaintiff is really seeking to compel the consul to act with respect to the visa applications of plaintiff's children. If that is the case, it is respectfully submitted that this Court lacks subject matter jurisdiction since it is well-settled that consular action with respect to the issuance of visas is not subject to judicial review. Gomez v. Kissinger, F.2d (2d Cir. 1976.

WHEREFORE, it is prayed that plaintiff's motion be denied in all respects.

MARY P. MAGUIRE

Sworn to before me this
2nd day of September, 1976.

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1977

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In REPLY REFER

wfb

U.S. DEPARTMENT OF LABOR
Manpower Administration
1515 Broadway
New York, New York 10036

United States Training
and Employment Service

UNEMPLOYMENT INSURANCE SERVICE

DATE: 4/11/73

Hsin Hsin Chinese Restaurant
1405 Avenue J
Brooklyn, N.Y. 11230

Re: Application for Alien Employment Certification
for Wan Shih Chang Hsieh - Spec Cook
2/26/73

The Department of Labor has made a determination in the above request. Final action has been taken as follows:

☒ 1. FormMA7-50 has been certified and is enclosed with the supporting documents. All enclosures should be submitted to the Immigration and Naturalization Service District Office either with your petition (Form I-140) or for consideration of alien's application for adjustment of status.

☐ 2. FormMA7-50 has been certified and forwarded to the _____ Consulate at which the alien has indicated he will file a visa application. The Consular Officer will inform the alien of the additional documents to be submitted and steps to be taken in order to apply for an immigrant visa.

☐ 3. On the basis of information available to us, we cannot issue the certification required by Section 212 (a) (14) of the Immigration and Nationality Act, as amended.
Reason: ☐ Available job market information will not warrant a certification of unavailability of workers in the U.S.

☐ _____

Remarks: _____

c.c. Pillersdorf, Nassy, Feuerstein & Lee
225 Broadway
N.Y.,N.Y. 10007

Sincerely yours,

Edwin T. Redding
Certifying Officer

cc: State ES-Agency

BES FL 71-48
(Rev. 3-67)

☆ U.S. GOVERNMENT PRINTING OFFICE: 1973—716-889 99-73 Region 2-II

EXHIBIT A

U.S. DEPARTMENT OF LABOR
MANPOWER ADMINISTRATION

MA 7-50B

REPLACES FORM ES 575B

Form Approved
Budget Bureau No. 44-R1301

APPLICATION FOR ALIEN EMPLOYM CERTIFICATION
JOB OFFER FOR ALIEN EMPLOYMENT

READ THIS NOTICE BEFORE COMPLETING FORMS

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Any alien, prospective employer or any person acting on behalf of such alien or employer, who knowingly makes any misrepresentation concerning the alien, or his prospective employment including such matters as wages, hours, or the occupation in which an alien will be employed, or any person who falsely represents, in the execution of this form that he is offering the alien employment as the prospective employer of such alien, will be prosecuted to the fullest extent of the law.

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM

Print legibly in ink or use a typewriter. If you need more space to answer fully any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

IN SUPPORT OF THE APPLICATION FOR ADMISSION OF

1 NAME OF ALIEN *If for temporary employment of more than one alien in same occupation, attach list of names and present addresses.*

Family name in capital letters	First name	Middle name	Maiden name
HSIEH	Wan	Shih	Chang

2 PRESENT ADDRESS OF ALIEN

Number and street	City and town	State & ZIP Code or Province	Country	3 TYPE OF VISA (If in U.S.)
1405 Avenue J.	Brooklyn	New York		G-4

NOTE: Do not employ a nonimmigrant alien who cannot show authorization to work stamped or endorsed on his form I-94, Arrival and Departure Record. Contact Immigration and Naturalization Service if in doubt. An alien who works without authorization is subject to deportation and his employer is subject to denial of certification.

THE FOLLOWING INFORMATION IS SUBMITTED AS EVIDENCE OF AN OFFER OF EMPLOYMENT

4 NAME OF EMPLOYER *(Full name of organization)*: Hsin Hsin Chinese Restaurant

5 TELEPHONE *(Area code and number)*: DE8-2566

6 ADDRESS

Number and street	City or town	County	State	ZIP Code
1405 Avenue J.	Brooklyn	New York	New York	11230

7 ADDRESS WHERE ALIEN WILL WORK *(If different from item 6)*: same as item 6

8 SIZE OF ORGANIZATION

ANNUAL SALES OR INCOME	TOTAL NO. OF EMPLOYEES
$ 100,000.00	7

CORRECTION APPROVED BY REGIONAL OFFICE

9 BRIEF NONTECHNICAL DESCRIPTION OF THE NATURE OF EMPLOYER'S BUSINESS OR ACTIVITY: Chinese Food

10 NO. OF EMPLOYEES WHO PERFORM SAME WORK AS ALIEN: one

11 NO. OF EMPLOYEES AT PLACE WHERE ALIEN WILL WORK: 7

Complete items 13 and 14 only if job is temporary

12 IF SEASONAL JOB, ENTER MONTHS THAT JOB STARTS & ENDS: not applicable

FROM	TO

13 EXACT DATES YOU EXPECT TO EMPLOY ALIEN(S)

FROM	TO
permanently	

14 NO. OF OPENINGS TO BE FILLED BY ALIENS UNDER THIS JOB OFFER: 1

15 WOULD YOU HIRE A QUALIFIED U.S. WORKER IF AVAILABLE? [X] YES [ ] NO

16 DESCRIBE EFFORTS YOU HAVE MADE TO FILL THE JOB: Through Chinese Employment Agencies, Chinese Newspapers, other Chines Restaurants and many customers and friends

17 DESCRIBE HOW YOU LEARNED THAT ALIEN NAMED ABOVE WAS AVAILABLE: Introduced by alien's former employer, Mr. Chien Ching Tsui

18 ALIEN NAMED ABOVE EMPLOYED BY ME

[ ] CURRENTLY — DATE STARTED: not applicable

[ ] PREVIOUSLY — DATE LEFT *(If any)*:

PREVIOUS CERTIFICATIONS RECEIVED *(Permanent job offers only)*

19 NO. CERTIFICATIONS RECEIVED	DATE OF MOST RECENT	20 NO. ALIENS HIRED	NO. STILL ON JOB
none		none	

ENDORSEMENTS

Pursuant to the provisions of section 212(a) (14) of the Immigration and Nationality Act as amended I hereby certify that there are not sufficient U. S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U. S. similarly employed.

Make no entry in this section — for government agency use only

21 DATE FORMS ARE RECEIVED AS ACCEPTABLE FOR PROCESSING

L.O.	S.O. FEB 26 1973
R.O.	N.O.

APR 11 1973 (Date) — Edwin J. Lessing (Certifying Officer)

For Local ES Office Use Only

L.O. ADDRESS: Central Immigration Office
Division of Employment
48-09 108th Street
Corona, New York 11368

22 IND. CODE	23 OCC. TITLE	24 OCC. CODE
5812	Spec. Chef	313.131

Items continued on reverse

Apr. 1970

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25. NAME OF JOB OFFERED: chef

28. IS THERE EITHER A LABOR DISPUTE EXISTING OR A LABOR CONTRACT BEING NEGOTIATED? ☐ YES ☒ NO

27. IF THE JOB IS UNIONIZED ▶ | NUMBER OF LOCAL | NAME: not applicable | CITY AND STATE

26. TOTAL HOURS PER WEEK		29. RATE OF PAY (Per hour, week, etc.)		ADDITIONS TO BASIC RATE OF PAY (Commission, piece rate, etc.)
BASIC	OVERTIME	BASIC	OVERTIME	
40 hrs.	none	195. PER week	none PER	Free apartment, and three meals free

30. DESCRIBE FULLY THE JOB TO BE PERFORMED (If alien is required to live at work, form MA 7-50C must also be submitted.)

DUTIES

Please see the attached letter

EQUIPMENT OPERATED: All equipments, tools, utensils required in Chinese food cooking

WORKING CONDITIONS: excellent

31. STATE IN DETAIL THE *MINIMUM* REQUIREMENTS FOR WORKER TO PERFORM SATISFACTORILY THE JOB DUTIES DESCRIBED ABOVE

EDUCATION (Enter number of years)			SPECIFY COLLEGE DEGREE REQUIRED	MAJOR FIELD OF STUDY
GRADE SCHOOL	HIGH SCHOOL	COLLEGE		
6 yrs.				

	NUMBER OF YEARS OR MONTHS	TYPE OF TRAINING (Specify vocational preparation, such as apprenticeship, trade school or other training required)	
TRAINING ▶	1 yr.	Chinese food and dishes cooking	
EXPERIENCE ▶	NUMBER OF YEARS OR MONTHS IN JOB BEING OFFERED: 5 yrs.	OR NUMBER OF YEARS OR MONTHS IN RELATED OCCUPATION	RELATED OCCUPATION (Specify)

32. SPECIFY ANY OTHER SPECIAL REQUIREMENTS

Must know how to understand and to speak Fukiennese, Mandarin, Shanghainese and Szuchuan dialogues

33. OCCUPATIONAL TITLE OF PERSON WHO WILL BE ALIEN'S IMMEDIATE SUPERVISOR	34. TYPE AND DEGREE OF SUPERVISION ALIEN WILL RECEIVE	35. NUMBER OF OTHER EMPLOYEES ALIEN WILL SUPERVISE
president	none	2

36. HAVE YOU FULLY INFORMED ALIEN OF JOB DUTIES, RATE OF PAY, AND TERMS OF YOUR JOB OFFER? ☒ YES ☐ NO

37. DECLARATIONS

DECLARATION OF EMPLOYER: Under penalties of perjury, I declare that I have examined this application, supplements thereto, and all accompanying documents, and to the best of my knowledge and belief the information presented thereon is true, correct and complete.

SIGNATURE: × Chia Chi Chi | DATE SIGNED: February 23, 1973

NAME (Type or print): Chi-Chia CHI | TITLE: President

DECLARATION OF AGENT OF EMPLOYER (If prepared by, or if assistance in preparation is provided by person other than employer): I declare that the contents of this application, supplements thereto, and all accompanying documents are based on all information of which I have any knowledge.

SIGNATURE: Ping Lee | DATE SIGNED: February 23, 1973

NAME (Type or print): Ping LEE

ADDRESS (Number and Street, City, State and ZIP Code): PILLERSDORF, NASSY, FEUERSTEIN & LEE
225 BROADWAY, SUITE 1902
NEW YORK, N. Y. 10007

TEL. DE 8-2566

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HSIN HSIN

Chinese Restaurant

1405 AVENUE J
BROOKLYN, NEW YORK

FEB 26 1973

February 16, 1973

New York State Department of Labor
Division of Employment
New York State Employment Service
Central Immigration Office
48-09 108th Street
Corona, New York, 11368

Re: Wan Shih Chang Hsieh

Gentlemen:

The new stockholder of my Restaurant, Mrs. Wan Shih Chang Hsieh, will be responsible for the following duites, they are:

1. Preparation of all kinds of Chinese foods in the menu.
2. Ordering and buying all of the necessary raw and can foods, meats, vegetables, fishes and condiments, etc.
3. To make and plan the working schedules for the entire workers in the Restaurant.

As you know, Mrs. Hsieh is one of our stockholders in our Restaurant. She has invested about $7,000.00 up to date, and she is the sole female worker in my Restaurant. The fact that her working with us creates a curious mood and undoubtedly in helping our Restaurant's increasing incomes.

I would appreciate it very much, therefore, if your Labor Department would grant my application for Mrs. Hsieh's labor certificate as soon as possible.

Thank you very much for your kind and prompt attention to the above matter.

Respectfully yours
HSIN HSIN CHINESE RESTAURANT

By Chi Chia Chi
Chi-Chia Chi, President

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BUDGET BUREAU NO. 44-R 1301

U.S. DEPARTMENT OF LABOR
MANPOWER ADMINISTRATION

MA 7-50A

REPLACES FORM ES-575A

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

STATEMENT OF QUALIFICATIONS OF ALIEN

READ THIS NOTICE BEFORE COMPLETING FORMS

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another so to do is a felony punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Any alien, prospective employer or any person acting on behalf of such alien or employer, who knowingly makes any misrepresentation concerning the alien, or his prospective employment including such matters as wages, hours, or the occupation in which an alien will be employed, or any person who falsely represents, in the execution of this form that he is offering the alien employment as the prospective employer of such alien, will be prosecuted to the fullest extent of the law.

FOR ADVICE CONCERNING REQUIREMENTS FOR ALIEN EMPLOYMENT CERTIFICATION: If alien is in the U.S., contact nearest office of Immigration and Naturalization Service. If alien is outside U.S., contact nearest U.S. Consulate.

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM

Print legibly in ink or use a typewriter. If you need more space to fully answer any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

1. NAME OF ALIEN (Family name in capital letters)	First name	Middle name	Maiden name	2. ALIEN REGISTRATION NUMBER (If any)	3. TYPE OF VISA (If in U.S.)
HSIEH	Wan	Shih	Chang	none	G-4

4. PRESENT ADDRESS (Number and street)	City or town	State and ZIP Code or Province	Country	5. SEX	6. MARITAL STATUS
1405 Avenue J.	Brooklyn	New York		[ ] MALE [X] FEMALE	[X] MARRIED [ ] SINGLE

7. ALIEN'S BIRTHDATE (Month, day, year)	8. BIRTHPLACE City or town	State or Province	Country	9. PRESENT NATIONALITY OR CITIZENSHIP (Country)
March 20/31	Taipei	Taiwan	China	China

10. ADDRESS IN UNITED STATES WHERE ALIEN WILL RESIDE	11. AGES OF ALIEN'S UNMARRIED CHILDREN UNDER 21 YEARS OLD
1405 Avenue J. Brooklyn, New York	19 and 13

12. NAME & ADDRESS OF PROSPECTIVE EMPLOYER IF ALIEN HAS JOB OFFER IN U.S.	13. OCCUPATION IN WHICH ALIEN IS SEEKING WORK
Hsin Hsin Chinese Restaurant 1405 Avenue J., Brooklyn, N. Y.	Chef and Manager

14. 'X' the appropriate box below and furnish the information required for the box marked

[ ] A. ALIEN WILL APPLY FOR A VISA ABROAD AT THE AMERICAN CONSULATE IN ▶ (City in foreign country) (Foreign country)

[X] B. ALIEN IS IN THE UNITED STATES AND WILL APPLY FOR ADJUSTMENT OF STATUS TO THAT OF A LAWFUL PERMANENT RESIDENT IN THE OFFICE OF THE IMMIGRATION AND NATURALIZATION SERVICE AT ▶ City: New York State: New York

15. NAMES AND ADDRESSES OF SCHOOLS, COLLEGES AND UNIVERSITIES ATTENDED (Include trade or vocational training facilities)	FIELD OF STUDY	FROM Month	FROM Year	TO Month	TO Year	DEGREES OR CERTIFICATES RECEIVED
Ying Ko Public School	General	April	1940	March	1946	Diploma

SPECIAL QUALIFICATIONS AND SKILLS

16. ADDITIONAL QUALIFICATIONS AND SKILLS ALIEN POSSESSES AND PROFICIENCY IN THE USE OF TOOLS, MACHINES OR EQUIPMENT WHICH WOULD HELP ESTABLISH IF ALIEN MEETS REQUIREMENTS FOR OCCUPATION IN ITEM 13

Know how to speak and understand Fukiennese, Mandarin, Shanghainese and Szuchuan dialogues. Know how to use all equipments, tools, utensils required in Chinese foods cooking

LIST LICENSES (Professional, journeyman, etc.)

17. LIST DOCUMENTS ATTACHED WHICH ARE SUBMITTED AS EVIDENCE THAT ALIEN POSSESSES THE EDUCATION, TRAINING, EXPERIENCE AND ABILITIES REPRESENTED

A statement from former employer

ENDORSEMENTS

DATE REC. DOL. FEB 26 1973

O.T. & C

Make no entry in this section—for government agency use only

Apr. 1970

Items continued on reverse

16 EXPERIENCE. *List all jobs held during past three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 13*

NAME AND ADDRESS OF EMPLOYER

Kwok Kong Restaurant, No.6, 27 Lane, Cheng Tu Road, Taipei City, Taiwan

NAME OF JOB	DATE STARTED Month Year	DATE LEFT Month Year	KIND OF BUSINESS
Chef	Mar. 1959	Aug. 1965	Chinese Restaurant

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT — NO. OF HOURS PER WEEK: 40

1. In charge and responsible for cooking all and different kinds of poultry.
2. In charge and responsible for buying all necessary supplies, raw materials, and condiments, etc.

NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED Month Year	DATE LEFT Month Year	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT — NO. OF HOURS PER WEEK

NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED Month Year	DATE LEFT Month Year	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT — NO. OF HOURS PER WEEK

19. *List parties who are o. will be recipients of the amounts indicated, from or on behalf of alien, for placement and/or referral services provided in connection with this application for alien employment certification.*

NAMES (Type or print)	ADDRESSES (No. & Street, City, State & ZIP Code)	AMOUNTS
		$
		$
		$

20. DECLARATIONS

DECLARATION OF ALIEN: Under penalties of perjury, I declare that I have examined this application, supplements thereto, and accompanying documents, and to the best of my knowledge and belief, the information presented thereon is true, correct, and complete.

SIGNATURE: Kuan-Shih Chang HSIEH — DATE SIGNED: February 23, 1973

DECLARATION OF AGENT OF ALIEN (If prepared by, or if assistance in preparation is provided by person other than alien): I declare that the contents of this application, supplements thereto, and all accompanying documents are based on all information of which I have any knowledge.

SIGNATURE: Ping Lee — DATE SIGNED: February 23, 1973

NAME (Type or print): Ping LEE

ADDRESS (No. & Street, City, State and ZIP Code): PILLERSDORF, NASSY, FEUERSTEIN & LEE, 225 BROADWAY, SUITE 1902, NEW YORK, N. Y. 10007

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Kwok Kong Restaurant
No. 6, 27 Lane, Cheng Tu Road
Taipei City, Taiwan

CERTIFICATE OF EMPLOYMENT

This is to certify that Mrs. Wan Shih Chang Hsieh, born on March 20th., 1931, was in our employ as chef from March 1959 to August 1965.

During the period of her service, she has faithfully attended to her duties, proving herself to be industrious and throughly reliable with a good conduct and excellent character manner.

The discontinuance of my restaurant caused her to resign, but I am pleased to reoommend her to anyone who may require her service.

June, 1971

Chien Ching Tsui
President
(signed with seal)

P. S. Mr. Chien Ching Tsui is currently the co-owner of Fwa Sha Restaurant and he resides at 1985 Creston Avenue, Apt. 44N, Bronx, New York, 10453 (Telephone no. 878-2503)

This is to certify that the undersigned translated this certificate with his best knowledge and ability.

Ping Lee

Sworn to before me
this 23 day of February, 1973

CARLOS B. NASSY
Notary Public, State of New York
No. 24-8102010
Qualified in Kings County
Term Expires March 30, 1974

EXHIBIT B

MINUTES OF A SPECIAL MEETING OF THE STOCKHOLDERS, OFFICERS AND DIRECTORS OF FOUR SEAS RESTAURANT, INC.

A special meeting of the stockholders, officers and directors of FOUR SEAS RESTAURANT, INC., was held at the office of the corporation at 1405 Avenue J, Brooklyn, New York, on the 8th day of December, 1972, at 6:00 o'clock in the evening.

The meeting was called to order by the President who stated the object of the meeting.

The Secretary read the roll of the stockholders as they appear in the stock-record book of the corporation and the minute book of the corporation and reported that all of the stockholders of the corporation were present in person, as follows:

Name	No. of Shares
CHI-CHIA CHI	17.6
MA WING CHUNG	8.8
SHEK CHI-FAI	8.8
CHARLES TSENG	8.8
Total	44.0

The Secretary then read a Waiver of Notice of said meeting signed by all of the stockholders of the corporation and on motion duly made, seconded and unanimously carried it was ordered that the said Waiver be appended to the minutes of this meeting.

EXHIBIT C

The following were duly nominated and, a vote having been taken, were unanimously elected as directors of the Corporation to serve for one year and until their successors are elected and qualified:

CHI-CHIA CHI — MA WING CHUNG
SHEK CHI-FAI — CHARLES TSENG

The following were duly nominated and, a vote having been taken, were unanimously elected as officers of the Corporation to serve for one year and until their successors are elected and qualified;

President	CHI-CHIA CHI
Vice President	MA WING CHUNG
Secretary	SHEK CHI-FAI
Treasurer	CHARLES TSENG

A motion was duly made, seconded and unanimously carried, that the signing of these minutes shall constitute full verification thereof and waiver of all notices of the meetings by the signatories.

There being no further business the meeting was adjourned on motion duly made and unanimously carried.

Dated: Brooklyn, New York
December 8, 1972.

Shek Chi Fai
CHI-CHIA CHI, President

Chia Chi Chi
MA WING CHUNG, Vice President

Ma Wing Chung
SHEK CHI-FAI, Secretary

Charles Tseng
CHARLES TSENG, Treasurer

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WAIVER OF NOTICE OF SPECIAL
MEETING OF STOCKHOLDERS.

We, the undersigned, being all of the stockholders, officers and directors of FOUR SEAS COMPANY, INC., hereby severally waive notice of the time and place of a special meeting of the stockholders, officers and directors of said Corporation and consent that it be held at 1405 Avenue J, Brooklyn, New York, on December 8, 1972, at 6:00 o'clock in the evening, for the purpose of transacting any business which may lawfully come before said meeting.

Dated: December 8, 1972.

CHI-CHIA CHIU

MA WING CHUNG

MEI WING CHOW

CHARLES CHIU

(Rev. 6-1-73)N

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERV

New York, New York

NOTICE OF [ ] THIRD [X] SIXTH PREFERENCE PETITION APPROVED UNDER SECTION 203(a) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED.

IMPORTANT: IF THIS PETITION HAS BEEN APPROVED FOR SIXTH PREFERENCE AND IF CONDITIONS CHANGE SO THAT YOU DO NOT INTEND TO EMPLOY THE BENEFICIARY, NOTIFY THIS OFFICE IMMEDIATELY.

Name of Beneficiary	File No.	Date of Notice
Yun Sin Hsieh	A20 099 709	August 9, 1973
Country of Birth	**Occupation**	**Date Petition Filed**
China	Chef	February 26, 1973

VALIDITY: The approval of a petition for third or sixth preference classification is valid for as long as the supporting labor certification is valid and unexpired, provided in the case of a petition for third preference classification there is no change in the beneficiary's intention to engage in the indicated profession, art or science, and provided in the case of a petition for sixth preference classification there is no change in the respective intentions of the petitioner and the beneficiary that the beneficiary will be employed by the petitioner in the capacity indicated in the petition.

Please be advised that approval of the petition confers upon the beneficiary an appropriate classification. The approval constitutes no assurance that the beneficiary will be found eligible for visa issuance, admission to the United States or adjustment to lawful permanent resident status. Eligibility for visa issuance is determined only when application therefor is made to a consular officer; eligibility for admission or adjustment is determined only when application therefor is made to an immigration officer. Also, please note the items below which are indicated by "X" marks concerning this petition:

[ ] Your petition for preference classification has been approved by the Service and forwarded to the United States Consulate at _____. This completes all action by this Service on the petition. This Service has nothing to do with the actual issuance of visas. Visas are issued only by a United States Consul who is under the jurisdiction of the U.S. Department of State. Under the law only a limited number of visas may be issued by that Department during each year and they must be issued strictly in the chronological order in which petitions were filed for the same classification. When the beneficiary's turn is reached on the visa waiting list, the United States Consul will inform him and consider issuance of the visa. *Inquiry concerning visa issuance should be addressed to the Consul. This Service will be unable to answer any inquiry concerning visa issuance.*

[ ] The approval of the petition is conditioned upon the beneficiary being accompanied to the United States by the spouse through whom it is claimed the beneficiary is chargeable to a country in the Eastern Hemisphere or a dependent area and, if such spouse is not a lawful permanent resident alien, upon the issuance of an immigrant visa to such spouse pursuant to application for such visa made simultaneously with the beneficiary.

[X] The petition has been approved. The petition states that the beneficiary is in the United States and will apply to become a lawful permanent resident. The enclosed application for this purpose (Form I-485) should be completed and submitted by the beneficiary in accordance with the instructions contained therein. (If the beneficiary had previously submitted Form I-485 which was returned to him, he should resubmit that form.)

[ ] The petition has been approved. The beneficiary will be informed of the decision made on his pending application to become a lawful permanent resident (Form I-485).

[ ] The petition has been approved. The petition states that the beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident. A visa number is not presently available; therefore, the beneficiary may not now apply for adjustment of status to that of a permanent resident.

[ ] Remarks:

MAIL TO ☞ NAME AND ADDRESS OF PETITIONER

Very truly yours,

(FD) Hsin Hsin Chinese Restaurant
1405 Avenue J.
Brooklyn, New York 11230

DISTRICT DIRECTOR

[ ] CHECK THIS BOX WHEN COPY MAILED TO ATTORNEY OR REPRESENTATIVE

FILE COPY

EXHIBIT D

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FORM I-140
(Rev. 8-29-71) N

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form approved
OMB No. 42-R041B

RECEIVED
INFORMATION

PETITION TO CLASSIFY PREFERENCE STATUS OF ALIEN ON BASIS OF PROFESSION OR OCCUPATION

DATE RECEIVED
APR 30 1973
Immigration and Naturalization Service
New York, N.Y.

FEE STAMP

TO THE SECRETARY OF STATE

Petition was filed on 2-26-73

Beneficiary's file number A 20 099 709

Petitioner is approved for status under section ☐ 203(a)(3). ☑ 203(a)(6)

☑ Sec. 212(a)(14) certification attached.

☐ Blanket Sec. 212(a)(14) certification issued.

U.S. APPROVED INS.

DATE OF ACTION AUG 7 1973

DD

DISTRICT NEW YORK, N.Y.

See marks.

REMARKS

PETITIONER IS NOT TO WRITE ABOVE THIS LINE

Read this form and the attached instructions carefully before filling in petition

Petition is hereby made to classify the status of the alien beneficiary named herein for issuance of an immigrant visa as ("X" one)

☐ A THIRD PREFERENCE IMMIGRANT – An alien who is a member of the professions, or who because of his exceptional ability in the sciences or arts will substantially benefit prospectively the national economy, cultural interests or welfare of the United States. (Sec. 203 (a) (3), Immigration and Nationality Act, as amended.) If this box is checked, the alien or a person on his behalf must complete only Part I, below, and Part III.

☒ A SIXTH PREFERENCE IMMIGRANT – An alien who is capable of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States. (Sec. 203 (a) (6), Immigration and Nationality Act, as amended.) If this block is checked, alien's prospective employer must complete Parts I, II, and III.

(If you need more space to answer fully any questions on this form, use a separate sheet, identify each answer with the number of the corresponding question and sign and date each sheet.)

H-20

PART I – INFORMATION CONCERNING ALIEN BENEFICIARY

1. NAME (Last, in CAPS)	(First)	(Middle)	2. ALIEN REGISTRATION NO. (If any)	3. PROFESSION OR OCCUPATION
HSIEH	Wan	Chih	None	Chef

4. OTHER NAMES USED (Married woman give maiden name)
Chang, Wan Shih

5. DO NOT WRITE IN THIS SPACE A20099709

6. DOES BENEFICIARY INTEND TO ENGAGE IN HIS PROFESSION OR OCCUPATION IN THE UNITED STATES? ☒ YES ☐ NO. IF "NO," EXPLAIN.

7. PLACE OF BIRTH (Country)
China

8. DATE OF BIRTH (Month, day, year)
March 20/31

9. NAME OF PETITIONER (Full name of organization, if petitioner is an individual give full name with last in capitol letters)
Hsin Hsin Chinese Restaurant

10. NUMBER OF YEARS OF BENEFICIARY'S EXPERIENCE (If none explain why.)
25.0 Years

INDEXED
MAY 1 1973

11. CITY AND STATE IN THE UNITED STATES WHERE ALIEN INTENDS TO RESIDE
Brooklyn (City) New York (State)

12. BENEFICIARY'S PRESENT ADDRESS (Number and street) (City or town) (State or province) (Country) (ZIP Code, if in U.S.)
1405 Avenue J Brooklyn New York U.S.A. 11230

13. TO YOUR KNOWLEDGE, HAS A VISA PETITION EVER BEEN FILED BY OR ON BEHALF OF THIS BENEFICIARY BASED ON HIS PROFESSION OR OCCUPATION? ☐ Yes ☑ No. If "Yes," give name of each petitioner and date and place of filing.

14. IF BENEFICIARY IS NOW IN THE U.S. (a) HE LAST ARRIVED ON October 10, 1966 (Month) (Day) (Year)
AS A C-4 (Visitor, student, exchange alien, temporary worker, crewman, stowaway, etc.)
(b) SHOW DATE BENEFICIARY'S STAY EXPIRED OR WILL EXPIRE AS SHOWN ON HIS FORM I-94 OR I-95 (Show latest date) Dos

15. BENEFICIARY'S SPOUSE (If Unmarried, State Unmarried)	NAME (Last name)	(First name)	(Middle name)	(Maiden name, if married woman)
	Hsieh	Kuo		

COUNTRY OF BIRTH	DATE OF BIRTH	PRESENT ADDRESS (No. and Street) (City or Town) (State or Province) (Country)
China	May 10, 1923	No. 28, Alley 23, Lane 175, Sec. 3, Roosevelt Rd. Taipei City

16. BENEFICIARY'S CHILDREN (If None, State None)

NAME (Show M or S for married or single)	M.S.	BIRTHDATE	COUNTRY OF BIRTH	ADDRESS
Cheng Chiuo	S.	1-16-54	China	Same as above
Man Leh	S.	3-14-59	"	Same as above
Yu Nien	S.	5-1-51	"	Same as above

RECEIVED	TRANS IN	RET'D TRANS OUT	COMPLETED
MAY 3 1973			

AP 0 1 4 7 0

96

17. X THE APPROPRIATE BOX BELOW AND FURNISH THE INFORMATION REQUIRED FOR THE BOX MARKED

☐ Alien will apply for a visa abroad at the American Consulate in _____ (City in foreign country) _____ (Foreign country)

☒ Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at New York (City) New York (State). If the application for adjustment of status is denied the alien will apply for a visa abroad at the American Consulate in Taipei (City in foreign country) China (Foreign country)

PART II - INFORMATION CONCERNING PETITIONING EMPLOYER AND POSITION *(Fill in Part II only if petition is for visa preference)*

18. NAME OF PETITIONER (Full name of organization, if petitioner is an individual give full name with last in capital letters)
Hsin Hsin Chinese Restaurant

19. ADDRESS (Number and street) 1405 Avenue J. (Town or city) Brooklyn (State) New York (ZIP code) 11230

20. PETITIONER IS (X one)
☐ U.S. CITIZEN ☐ PERMANENT RESIDENT ALIEN ("A" NUMBER _____) ☐ NONIMMIGRANT ☒ ORGANIZATION

21. NET ANNUAL INCOME $100,000.00

22. WILL BENEFICIARY BE EMPLOYED AT THE ABOVE ADDRESS? ☒ YES ☐ NO. IF "NO," GIVE ADDRESS WHERE HE WILL WORK.

23. DO YOU DESIRE AND INTEND TO EMPLOY THE BENEFICIARY ☒ YES ☐ NO

24. HAVE YOU EVER FILED A VISA PETITION FOR AN ALIEN BASED ON HIS PROFESSION OR OCCUPATION? ☐ YES ☒ NO. IF "YES," HOW MANY SUCH PETITIONS HAVE YOU FILED?

25. ARE SEPARATE PETITIONS BEING SUBMITTED AT THIS TIME FOR OTHER ALIENS? ☐ YES ☒ NO. IF "YES," GIVE NAME OF EACH ALIEN

26. THE FOLLOWING DOCUMENTS ARE SUBMITTED WITH THIS PETITION AND ARE MADE A PART THEREOF.

A Notice from U. S. Dept. of Labor - An MA 7-50B - A letter from Hsin Hsin Chinese Restaurant - An MA 7-50A - Certificate of Employment - Minutes of Meeting.

FILL IN ITEMS 27 THROUGH 36 ONLY IF FORM MA 7-50B IS NOT REQUIRED TO BE ATTACHED *(See instruction 5)*

27. OCCUPATIONAL TITLE OF POSITION BENEFICIARY WILL OCCUPY

28. TOTAL HOURS BENEFICIARY WILL WORK PER WEEK

29. RATE OF PAY

30a. IS THE EMPLOYMENT SEASONAL? ☐ YES ☐ NO.

30b. IS THE EMPLOYMENT TEMPORARY ☐ YES ☐ NO.

31. STATE BRIEFLY THE NATURE OF PETITIONER'S BUSINESS OR ACTIVITY.

32. AVERAGE NUMBER OF EMPLOYEES AT ESTABLISHMENT WHERE BENEFICIARY WILL WORK.

33. NUMBER OF EMPLOYEES BENEFICIARY WILL SUPERVISE

34. DESCRIBE FULLY THE JOB TO BE PERFORMED, INCLUDING DUTIES, WORKING CONDITIONS AND EQUIPMENT OPERATED.

35. STATE IN DETAIL THE MINIMUM EDUCATION, TRAINING AND EXPERIENCE REQUIRED FOR PROFICIENCY IN JOB. (Specify degrees and major fields of study required. Specify apprenticeship, trade school or other training required.)

36. DESCRIBE SKILLS, KNOWLEDGES AND ABILITIES REQUIRED FOR PROFICIENCY IN JOB. Specify any other special requirements; list licenses and physical requirements.

Form Approved
Budget Bureau No. 43-R0400

APPLICATION FOR STATUS AS PERMANENT RESIDENT

IMM & NAT. SERV.
FEE STAMP UNIT
AUG 24 11 14 AM '73

A20 (A1)-6573

File No.

APPLICATION FOR THE BENEFITS OF SECTION:
[ ] 203(a)(7) and Sec. 245, I&N Act [ ] 245
[ ] 249 I&N Act
[ ] Sec. 214(d), I&N Act
[ ] Sec. 13, Act of 9/11/57

(DO NOT WRITE ABOVE THIS LINE.) (SEE INSTRUCTIONS BEFORE FILLING IN APPLICATION. IF YOU NEED MORE SPACE TO ANSWER FULLY ANY QUESTION ON THIS FORM, USE A SEPARATE SHEET AND IDENTIFY EACH ANSWER WITH THE NUMBER OF THE CORRESPONDING QUESTION. FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

1. I hereby apply for the status of a lawful permanent resident alien on the following basis: (Check box A, B, C, D, E or F)

An immigrant visa is immediately available to me:

A. [ ] As a refugee (Section 203(a)(7) and Section 245, I&N Act).

B. [ ] As a former fiancee or fiance of a U.S. citizen whom I married within 90 days after my arrival in the United States, or as a child of such fiancee or fiance (Section 214(d), I&N Act).

C. [ ] As a former government official, or as a member of the immediate family of such official (Section 13, Act of September 11, 1957).

D. [X] As a person to whom an immigrant visa is immediately available, other than one described above, (Section 245, I&N Act).

E. [ ] As a person who has resided in the United States continuously since prior to July 1, 1924 (Section 249, I&N Act).

F. [ ] As a person who has resided in the United States continuously since a date on or after July 1, 1924, but before June 30, 1948 (Section 249, I&N Act).

2. My name is (Last in capital letters) (First Name) (Middle Name)	My alien registration number is	Sex
HSIEH Wan-Shih CHANG (Maiden Name)	A20-099-709	[ ] Male [X] Female

3. I reside in the United States at: (Apt. No.)	(No. and Street)	(City)	(State)	(ZIP Code)
2nd floor	14-05 Ave.	Brooklyn	New York	

4. Date of Birth	Place of Birth (City or Town) (County, Province, or State) (Country)	I am now a citizen of (Country)
3-20-31	Taipei, Taiwan, China	China

5. I last arrived in the United States at the port of (City and State)	on (Month) (Day) (Year)
Honolulu Hawaii	Oct. 10, 1966

by (Name of vessel or other means of travel)	as a (visitor, student, exchange visitor, temporary worker, fiancee, fiance, crewman, parolee, etc.)
PN 910	C-4

I [X] was [X] was not inspected.	My nonimmigrant visa was issued by the United States Consul at (City) (State)	on (Month) (Day) (Year)
	Taipei, Taiwan	9-20-66

6. I am [ ] single [X] married [ ] divorced [ ] widowed

a. I have been married one times, including my present marriage, if now married. *(If you are now married give the following:)*

b. Number of times my spouse has been married	c. Name of spouse	d. My spouse resides [ ] with me [X] apart from me at (Address (Apt. No.) (No. & Street) (Town or City) (Province or State) (Country)
one	HSIEH, Kuo	22-1, 86 Lung Chuen Street, Taipei, Taiwan, China

7. a. I have 3 children, as follows: (complete all columns as to each child. If child lives with you, state "with me" in last column; otherwise give city and state or country of child's residence.

Name	Sex	Place of Birth	Date of Birth	Now Living at
CHANG, Yu-Nien	M	Taipei, Taiwan	5-1-51	22-1 Lane 86, Lung Chuen St.
HSIEH, Cheng Chiuo	M	Taipei, Taiwan	1-16-54	Taipei, Taiwan, China
HSIEH, Man Leh	F	Taipei, Taiwan	3-14-59	" "

Must be married

The following members of my family are also applying for permanent resident status:

CHANG, Yu-Nien
~~HSIEH, Cheng-Chiuo~~
~~HSIEH, Man-Leh~~

"not in the US @ this X"

8. I [ ] have [X] have not heretofore filed an application for the status of a permanent resident. *(If you have ever filed such application, give the date and place of filing and final disposition.)*

EXHIBIT E

NOV - 9 1973

9. I list below all organizations, societies, clubs, and associations, past or present, in which I have held membership in the United States or a foreign country, and the periods and places of such membership. *(If you have never been a member of any organization, state "None.")*

None

10. APPLICANTS FOR STATUS AS PERMANENT RESIDENTS MUST ESTABLISH THAT THEY ARE ADMISSIBLE TO THE UNITED STATES. EXCEPT AS OTHERWISE PROVIDED BY LAW, ALIENS WITHIN ANY OF THE FOLLOWING CLASSES ARE NOT ADMISSIBLE TO THE UNITED STATES AND ARE INELIGIBLE FOR STATUS AS PERMANENT RESIDENTS:

Aliens who have committed or who have been convicted of a crime involving moral turpitude (does not include minor traffic violations), aliens who have been engaged in or who intend to engage in any commercialized sexual activity, aliens who are or at any time have been, anarchists, or members of or affiliated with any Communist or other totalitarian party, including any subdivision or affiliate thereof, aliens who have advocated or taught, either by personal utterance, or by means of any written or printed matter, or through affiliation with an organization, (i) opposition to organized government, (ii) the overthrow of government by force and violence, (iii) the assaulting or killing of government officials because of their official character, (iv) the unlawful destruction of property, (v) sabotage, or (vi) the doctrines of world communism, or the establishment of a totalitarian dictatorship in the United States; aliens who intend to engage in prejudicial activities or unlawful activities of a subversive nature, aliens who have been convicted of violation of any law or regulation relating to narcotic drugs or marihuana, or who have been illicit traffickers in narcotic drugs or marihuana; aliens who have been involved in assisting any other aliens to enter the United States in violation of law, aliens who have applied for exemption or discharge from training or service in the Armed Forces of the United States on the ground of alienage and who have been relieved or discharged from such training or service.

Do any of the forgoing classes apply to you? ☐ Yes ☒ No *(If answer is Yes, explain)*

✓

11. *(COMPLETE THIS BLOCK ONLY IF YOU CHECKED BOX "A", "B", "C" or "D" OF BLOCK 1)*

APPLICANTS WHO CHECKED BOX "A" "B" "C" OR "D" OF BLOCK 1 (INCLUDING REFUGEES) IN ADDITION TO ESTABLISHING THAT THEY ARE NOT MEMBERS OF ANY OF THE INADMISSIBLE CLASSES DESCRIBED IN BLOCK 10 ABOVE MUST, EXCEPT AS OTHERWISE PROVIDED BY LAW, ALSO ESTABLISH THAT THEY ARE NOT WITHIN ANY OF THE FOLLOWING INADMISSIBLE CLASSES:

✓

Aliens who are mentally retarded, insane, or have suffered one or more attacks of insanity; aliens afflicted with psychopathic personality, sexual deviation, mental defect, narcotic drug addiction, chronic alcoholism or any dangerous contagious disease; aliens who have a physical defect, disease or disability affecting their ability to earn a living; aliens who are paupers, professional beggars or vagrants; aliens who are polygamists or advocate polygamy; aliens who intend to perform skilled or unskilled labor and who have not been certified by the Secretary of Labor (see Instruction 10); aliens likely to become a public charge; aliens who have been excluded from the United States within the past year, or who at any time have been deported from the United States, or who at any time have been removed from the United States at Government expense; aliens who have procured or have attempted to procure a visa by fraud or misrepresentation; aliens who have departed from or remained outside the United States to avoid military service in time of war or national emergency; aliens who are former exchange visitors who are subject to but have not complied with the two year foreign residence requirement.

Do any of the foregoing classes apply to you? ☐ Yes ☒ No *(If answer is Yes, explain)*

12.

I ☒ do ☐ do not intend to seek gainful employment in the United States. If you intend to seek gainful employment in the United States, state the occupation you intend to follow. Cook

✓

13. *(Complete this block only if you checked box A or D of block 1)*

☐ a. I have a priority on the consular waiting list at the American Consulate at _____ (City) as of _____ (Date)

☒ b. A visa petition according me ☐ immediate relative ☒ preference status was approved by the district director at New York (City and State) on August 9th, 1973 (Date)

☐ c. A visa petition has not been approved in my behalf but I claim eligibility for preference status ☐ me because ☐ my spouse ☐ my parent is the beneficiary of a visa petition approved by the district director at _____ (City and State) on _____ (Date)

☐ d. I am claiming preference status as a refugee under the proviso to Section 203(a)(7) of the Act who has been continuously physically present in the United States for at least the past two years. *(If you check this item, you must execute and attach Form I-590A to this application.)*

☐ e. Other *(explain)* _____

99

14. *(Complete this block only if you checked box E or F of Block 1)*

A. I first arrived in the United States at (Port) on (Date) by means of (Name of vessel or other means of travel)

I ☐ was ☐ was not inspected by an immigration officer.

B. I entered the United States under the name (Name at time of entry) and I was destined to (City and State)

I was coming to join (Name and relationship)

C. Since my first entry I ☐ have ☐ have not been absent from the United States. *(If you have been absent, attach a separate statement listing the port, date and means of each departure from and return to the United States.)*

15. ☑ Completed Form G-325A (Biographic Information) is attached as part of this application.

☐ Completed Form G-325A (Biographic Information) is not attached as applicant is under 14 years of age.

16. IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS, WRITE YOUR NAME IN YOUR NATIVE ALPHABET BELOW:

謝張同市

Signature of Applicant: HSIEH Chang wen SHIH

Date of Signature:

17. (Signature of person preparing form, if other than applicant.) I declare that this document was prepared by me at the request of the applicant and is based on all information on which I have any knowledge.

Date:

Address of person preparing form, if other than applicant

PILLERSDORF, NASSY, FEUERSTEIN & LEE
225 BROADWAY, SUITE 1902
NEW YORK, N. Y. 10007
(212) 964-6710

Occupation:

(A[illegible] be signed below until applicant appears before an officer of the Immigration and Naturalization Service for examination)

I, ____________________, do swear (affirm) that I know the contents of this application subscribed by me including the attached documents, that the same are true to the best of my knowledge, and that corrections numbered (1) to (4) were made by me or at my request, and that this application was signed by me with my full, true name:

謝張同市

(Complete and true signature of applicant)

Subscribed and sworn to before me by the above-named applicant at __________ on 11 -9. '75

(Month) (Day) (Year)

(Signature and title of officer)

INSTRUCTIONS

Read instructions carefully. Fee will not be refunded.

1. APPLICATION.–A separate application must be executed by each applicant. An application in behalf of a child under 14 years of age shall be executed by the parent or guardian. Form G-325A (Biographic Information) must be completed and submitted with each application if the applicant is 14 years of age or older. Failure to do so delays action and may result in return of the application.

2. FEE.–A fee of $25 must accompany each application. Read instructions carefully. Fee will not be refunded. All remittances should be made payable to "Immigration and Naturalization Service, Department of Justice," except in Guam they should be made payable to "Treasurer of Guam" and in the Virgin Islands to "Commissioner of Finance, Virgin Islands." If you mail this application, attach money order or check. DO NOT SEND CASH.

3. PHOTOGRAPHS.–You must submit with this application two photographs of yourself taken within 30 days of the date of this application. These photographs must be 1½ by 1½ inches in size, and the distance from the top of head to point of chin should be approximately 1¼ inches. They must not be pasted on cards or mounted in any way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. Snapshots, group, full-length portraits or vending machine photographs will not be accepted. Using crayon or soft pencil to avoid possible mutilation of the photographs, write your name lightly on the reverse of the photographs.

4. FINGERPRINTS.–A completed fingerprint chart must be submitted by each applicant who is 14 years of age or older. Fingerprint charts with instructions for recording your fingerprints are available at any office of the Immigration and Naturalization Service. It is important to furnish all information called for on the card.

5. DOCUMENTS

a. *General*–All documents must be submitted in the original. If you desire to have the original of any of the other documents returned, and if copies are by law permitted to be made, you may submit photographic or typewritten copies. If you submit copies, the original documents must be presented at the time of your examination. Each foreign document must be accompanied by a translation certified by the translator as to the accuracy of the translation and as to his competency to translate. If you are unable to secure documentary evidence from abroad, you must submit proof of the efforts you have made to secure such documents.

b. *Submit the following documents only if you checked box "A" or "D" in block 1 of the application.*

(1) Record of your birth.

(2) A letter from your present employer showing employment of a permanent nature, if you are employed, or an affidavit of support Form I-134 from a responsible person in the United States, or other evidence to establish that you are not likely to become a public charge.

(3) If you are the spouse or unmarried minor child of a person who has been granted preference classification by the Immigration and Naturalization Service or has applied for preference classification, and you are claiming the same preference classification, or if you are claiming special immigrant classification as the spouse or unmarried child of a minister of religion who has been accorded or is seeking classification as a special immigrant, submit the following: *For the spouse:* Marriage certificate and proof of termination of all prior marriages of each spouse. *For the child:* Marriage certificate of parents, together with proof of termination of their prior marriages, if such documents have not been submitted by a parent.

(4) If you are a nonimmigrant foreign government official, a member of the family or servant of such person, or a treaty trader, the spouse or child of such person or a foreign government representative to an international organization, a member of a family or servant of such person, you must submit Form I-508, waiving all rights, privileges, exemptions, and immunities which would otherwise accrue to you by virtue of such status.

(5) If you checked box "A" in block 1 of the application, you must execute and attach a single copy of Form I-590A.

c. *If you checked box "E" in block 1 of the application, submit your marriage certificate if you are the spouse; if you are the child, submit your birth certificate and the marriage certificate for your parent's present marriage.*

d. *If you checked box "E" in block 1 of the application, submit documentary evidence to prove you have resided in the United States continuously since prior to July 1, 1924. If you have checked box "F", submit documentary evidence to prove you have resided in the United States continuously since prior to June 30, 1948.*

(1) Examples of documents which may be submitted to prove residence are: bankbooks, leases, deeds, licenses, birth records or baptismal records of children born in the United States, census records, affidavits, police records; contracts, postmarked mail addressed to you, rent or tax receipts, premium installment receipt books or any other type of receipt; school records on the school's stationery showing dates when you entered and left the school and if available, showing the name of parent or guardian and where you resided; employment records on letterhead paper or notarized, showing the signer's title and indicating exact dates of employment and stating if the employment was continuous; insurance records or letters on insurance company stationery showing the name and address of the insured and the date showing the lifetime of the policy; church, union or lodge records on official stationery and bearing the organizational seal, if any, and giving specific dates in their records showing your membership in the organization; letter from business firms on letterhead paper showing specific dates of business dealings with you and indicating your address during the period in question; letters from landlords indicating the

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

120

MEMORANDUM OF CREATION OF RECORD OF LAWFUL PERMANENT RESIDENCE

Place: NYC 245
File No.: A20 099 709

Status as a lawful permanent resident of the United States is accorded:

Name	Wan-Shih Hsieh
Street Address	14-05 Avenue J
City, State, Zip	Brooklyn, New York

SEX: F | DATE OF BIRTH: 3-20-31
PLACE OF BIRTH: China
NATIONALITY: China
PRIORITY DATE: 2-26-73

COUNTRY TO WHICH CHARGEABLE (If any): China Z-2 (P6-1)
PREFERENCE (If any): 6th Preference

REMARKS

NONPREFERENCE: ☐ Section 212(a)(14) certification not required because:

☒ Individual section 212(a)(14) certification issued ☐ Blanket section 212(a)(14) certification issued under the following provision of law:

☐ Sec 203(h) of the I & N Act ☐ Sec 249 of the I & N Act ☐ Sec 214(d) I & N Act
☐ Private Law no. _____ of the _____ Congress _____ session
☐ Sec 244( )( ) of the I & N Act ☐ Sec 1 of the Act of 11/2/66
☒ Sec 245 of the I & N Act ☐ Sec 13 of the Act of 9/11/57 ☐ _____ (Other law: Specify)

As of (Month) (Day) (Year) 11-9-73 PORT OF ENTRY FOR PERMANENT RESIDENCE P66

Class of admission (Insert symbol) Z-2 (P6-1)

(Applicable in all cases)

RECOMMENDED BY: (Immigration Officer) _____ (Date) NOV - 9 1973

DATE OF ACTION NOV - 9 1973

DD

DISTRICT

FOR USE BY VISA CONTROL OFFICE

Date OCT 1 1973

Foreign State China

Preference Category 6th

Number 6512

Month of Issuance NOVEMBER

Signed _____ (Visa Office, Dept. of State)

TRUE AND CERTIFIED COPY

Kuo Hsieh	Spouse
Chang, Yu-Nien	I-151 15-1-51
Cheng Chiuo Hsieh	NOV - 9 1973 I-151 8-1-54
Man Leh Hsieh	Date 3-14-59

Now residing at 22-1 86 Lung Chuen Street Taipei, Taiwan, China, will apply at your Consulate at Taipei, Taiwan.

STATISTICS

☒ Form I-357 delivered ☒ Form I-151 delivered ☐ Form I-151 mailed ☐ Form G-153 delivered

CC: ☐ Visa Control Office, Visa Office, Department of State, Washington, D.C. 20520 for allocation of Immigrant visa number.

☐ State Director, Selective Service _____

FORM I-181 (REV. 12-1-72) Y

(Page 1)

EXHIBIT F

OPTIONAL FORM NO. 10
5010-104

UNITED STATES GOVERNMENT

Memorandum

TO : District Director, USIMS
New York City,

DATE: 31 JUL 1975

FROM : American Consul
Taipei, Taiwan

SUBJECT: HSIEH (CHANG) Wan-shih: A20 099 709 possible fraudulent adjustment of status.

The SUBJECT adjusted status from G-4 non-immigrant to sixth preference immigrant at New York City on November 9, 1973 as a Chinese specialty cook. This Embassy has no record of the visa issuance but presumably she was the wife of a U.N. employee. A copy of her household registration shows that she and her husband moved out to the United States in 1970 and shows her "occupation" changed from "housewife" to employee of the Hsin Hsin restaurant in New York on December 28, 1973.

The SUBJECT has filed second preference immigrant visa petitions for her children. The Embassy is suspicious of the SUBJECT's claimed experience as a cook at the Kwok Kong Restaurant as is was not listed on the SUBJECT's household register.

ACTION REQUESTED: Embassy requests the Service to forward copies of the SUBJECT"s original adjustment application and some documentation of her previous G-4 status. We note that she has little education, she claims her husband, Kuo HSIEH, died in 1974 dated 1975, shows him as living and still married to the Subject. The SUBJECT also lists on the I-130 as 1966 as the last year in which she and her husband resided together.

JJTJacik

LCT

FILE NO. A20 099 709

NAME (Last, (IN CAPS), First, Middle) HSIEH, WAN SHIH

AREA FRAUD

G-23 Line No. 503

ASSIGNED TO

Date Assigned

Investigation Warranted
Classification approved
by ED

Call-Up

Received 9/15/75 (Date)

Investigations Control Card
Form G-600A (Rev. 9-1-69)

Work Copy

GPO 951-944

EXHIBIT G

STATEMENT

Taipei, Taiwan

March 12, 1976

I, CHANG Yu-nien, hereby state that I am presently residing at #74, Alley 1, Lane 53, Fu Shan Street, Fuchien, Panchiao, Taipei County, Taiwan, and that I voluntarily will relate my mother's past work experience in Taiwan as follows:

My mother, HSIEH Wan-shih, departed Taiwan on October 10, 1966 and has been living in the United States as a permanent resident. Between 1954 and 1966, she supported the family by working as a pedicab driver. The pedicab was chartered by parents of some children in kindergartens and grade schools, and her job was to send the children to schools and pick them up after school every day. My father, HSIEH Kuo, also used to do the same work until he became ill and bed-ridden. My mother workedin that capacity until she left for the United States in October 1966. She also had worked as a part time Amah during the priod of 1963 to 1966 at Mrs. CH'EN Chu Ming's private residence, #44, Lane 86, Lung Chuan Street, Taipei, Taiwan. Mrs. CH'EN died in 1975. My mother's work included cleaning, washing and taking Mrs. CH'EN to her friends to play cards, and so on, but my mother did not cook for Mrs. CH'EN.

My mother, HSIEH Wan-shih, never worked as a cook in restaurants in Taiwan before she went to the United States. Apart from her work experience as a pedicab driver and as an Amah, she has never had any other job experience in Taiwan.

I further state that the above is true and correct as written.

/s/ CHANG Yu-nien
#74, Alley 1, Lane 53, Fu Shan Street,
Panchiao, Taipei County, Taiwan.

Subscribed and sworn to before Consul of the United States
on the 12th day of March, 1976.

/s/ Edward H. Wilkinson
Consul of the United States of America.

I certify that the above is a truthful translation of the original text.

Nelson Yang, Investigator.

EXHIBIT H

台灣台北市 1966年3月16日

我張有年，現住台北縣板橋鎮埔墘富山街53巷一弄廿四號。關於我母親的經歷我願表明如左：

我母親謝圍市於1966年10月10日離開台灣前往美國，現在是合法的居留權卡所有人。她從1956年或1965年起以踏三輪車送小學生及幼稚園學生到學校，放學時又把他們接回家。我父親謝果也做同樣的工作，因生病的關係由我母親來做。她的踩三輪車工作一直延續到1966年10月去美國為止。從1963年至1966年三年期間她也給人家幫傭，在台北市龍泉街86巷44號雇主陳米明太太，陳太太已於1965年去世了。她的工作包括打掃，洗衣，燒飯，送陳太太朋友家打雜等。過去我母親在台灣時並沒有在餐館做廚師工作。除了踩三輪車及幫傭以外，我母親在台灣從沒有其他工作。

上面所寫的都是可以確定無誤。

台北縣板橋鎮埔墘富山街53巷1弄24號 張有年

Republic of China
Province of Taiwan
City of Taipei
Embassy of the United States of America) ss:

Subscribed and sworn to before me, Edward H. Wilkinson, Consul of the United States of America at Taipei, Taiwan, Republic of China, duly commissioned and qualified this day of [illegible] 1966.

Edward H. Wilkinson
Consul of the United
States of America

CONSULAR SECTION
AMERICAN EMBASSY
TAIPEI, TAIWAN

104

REPORT OF VISA INVESTIGATION

SUBJECT: HSIEH (C-4NC) Mei-hsh	Date of Report: MAR 15, 1976
CTC : 1728 6200 4457 1509	Investigator : TKACIK
DPOB : MAR 20, 1931	Reference : CONS memo to
INS # : A20 099 709/NYC	INS/NYC JUL 31, 1975

Computer Code: 69

Approved: John Tkacik, American Consul Date: MAR 15, 1976

DETAILS: SUBJECT adjusted status to Lawful Permanent Resident of the United States at New York City based on a labor Certification for a Chinese specialty cook with at least five years experience and a sixth preference petition filed by the Hsin Hsin Chinese restaurant. The adjustment of status was approved on NOV 9, 1973.

To qualify for labor certification SUBJECT claimed to have five years experience as a Chinese specialty cook at the Kwok Kong Restaurant at No.#6 27 Lane, Cheng Tu Road, Taipei from May of 1959 to August of 1964, working 40 hours a week.

#6, Lane 27, Cheng Tu Road, Taipei was visitedb but the Kwok Kong restaurant is no longer located there.

SUBJECT's son, a beneficiary of a second preference petition filed by SUBJECT stated under oath that his mother, the SUBJECT, had never been employed as a cook while in Taiwan, rather, she was a pedicab driver. (see attatched statement).

ACTION REQUESTED: Embassy TAIPEI requests the Immigration and Naturalizati Service in New York to review the SUBJECT's immigration status in view of the attatched. Embassy TAIPEI believes that SUBJECT obtained her Immigration Status by fraud, and that she is therefore subject to rescission of her immigrant status.

SUBJECT's children are presently applying for P2-2 immigrant visas at TAIPEI. Their visa applications will be held in abeyanc pending receipt of INS/NYC notice of final decision.

EXHIBIT I

cc: District Director, INS/NYC

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LAW OFFICES OF
DAVID C. BUXBAUM, P.C.
SUITE 510
111 BROADWAY
NEW YORK, N.Y. 10006
(212) 349-5780 425-4347

July 13, 1976

Mr. Maurice F. Kiley
District Director
United States Department of Justice
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Re: Petitioner - Wan Shih HSIEH
Beneficiaries - Yu Nien Chang, A20 812 522
Cheng Chiuo Hsieh, A20 812 520
Man Leh Hsieh, A20 812 518

Dear Mr. Kiley:

For many months we have encountered endless delays with regard to the visa applications of the above-captioned immigrants. We have written to the Travel Control Branch of the Immigration and Naturalization Service on May 19 and January 27, 1976 detailing the facts of this matter. In addition, the American Embassy in Taiwan advised us that they have also written to the I.N.S.:

> We have reviewed Mrs. HSIEH(CHANG) Wan-shih's case and have referred it to the Travel Control branch of the Immigration and Naturalization Service Office in New York. We regret that we are unable to approve the immigrant visa applications for Mrs. HSIEH's children until the I&NS has reviewed her case and advised us whether she continues to remain eligible for permanent resident status. When the I&NS replies to our memoranda of July 31, 1975 and March 15, 1976 we will process the visa applications for her children accordingly.

Apparently, the I.N.S. has not had the courtesy to reply to the American Embassy's correspondence.

8/5/76
Secretary to Mr. Burbaum advised that Mr. Ping Lee was formerly employed there. She was advised to have Mr. Burbaum submit a G-28 if he is presently representing subject & he indicates that he would also. Subject ESL.

EXHIBIT J

The petition for these immigrants was approved more than one year ago. These children are still waiting in Taiwan to be reunited with their mother in this country. There should be no reason for any further delay as it should be a simple matter for the New York office of the I.N.S. to advise the American Embassy in Taiwan about Mrs. HSIEH's eligibility for permanent resident status. We have written several letters and sent supporting documentation, and yet we have had no response from the I.N.S.

If we can be of further assistance in expediting these applications, please let us know. We respectfully request that you advise us immediately of the status of this matter and what actions have been taken to move this matter along.

Very truly yours,

LAW OFFICES OF DAVID C. BUXBAUM, P.C.

By: _____
David C. Buxbaum

DCB:pmo

107

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

FILE NUMBER

A20 039 109

DATE

August 9, 1976

Hsieh Wan-Snih
79-11 41 Ave
apt B 506
Elmhurst, N.Y. 11373

Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION	20 West Broadway New York Room No. 13 Floor No.
DATE AND HOUR	Kindly telephone to arrange interview
ASK FOR	Miss Weisheit 264-5334
REASON FOR APPOINTMENT	Petitions for children
BRING WITH YOU	1974 & 1975 W-2 forms, death certificate of spouse

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH YOU.
If you are unable to do so, state your reason, sign below and return this letter to this office at once.

Pillerdorf, Nassy, Fuerstein &Lee
225 Broadway
Suite 1902
New York, N.Y. 10007
att: Ping Lee

I am unable to keep the appointment because:

SIGNATURE

DATE

Very truly yours,

Form G-56
(Rev. 5-1-73) N

☐ CHECK THIS BOX WHEN COPY MAILED TO ATTORNEY OR REPRESENTATIVE FILE COPY

EXHIBIT K

108

NYC 2 [illegible]
A20 [illegible]
A20 593 [illegible]
A20 812 518
A20 812 520
A20 812 522

August 25, 1976

MEMORANDUM TO FILE

Re: Attorney Incident: David C. Burbaum, 11 Broadway, Suite 1612, New York, N. Y., Telephone 425-4347

In a letter dated 7/13/76, David Burbaum inquired about the status of I-130 petitions filed by Hsieh Wah Shih in behalf of her three children in Taiwan. Supervisory Investigator Dorrell telephonically contacted Burbaum's office on 8/5/76 and advised that according to the file, Ping Lee was the attorney of record, and that if Mr. Burbaum now represented Hsieh he should file a G-28.

On 8/9/75 a call-in letter was sent to Hsieh and a copy to Ping. There was no reply.

I telephoned Mr. Burbaum's office on 8/17/76 and told the secretary that I should like to arrange an interview as soon as possible. I added that Mr. Burbaum could file the G-28 at the time of the interview. An appointment was made for 10:00 a.m. on 8/25/76.

Burbaum and his client appeared at 9:45 a.m. on this date. Mr. Burbaum filed the G-28 and complained about how long the processing of the application was taking. When he asked about the purpose of the interview, I told him that we had received information that Subject was not an experienced chef when she received her immigrant visa and that I wanted to take a statement about her work experience in Taiwan and in the United States. I added that I was particularly interested in her present employment but that I would begin with her employment in Taiwan.

The interview began at 10:00 a.m. with Mr. Tsang Fong as the Mandarin interpreter. It immediately became apparent that Mr. Burbaum also spoke Chinese very well. When I asked the Subject if she had ever worked as a chef in a Chinese restaurant in Taiwan, she answered that she had learned to cook in one, and that it was training rather than a job. I tried to make a distinction between her working there and her being gainfully employed. Mr. Burbaum began to challenge Mr. Fong's interpretation. Mr. Fong told the attorney he was using as simple words as possible, inasmuch as the alien was an uneducated woman and that he would call his supervisor if the attorney continued to complain. At this point, Mr. Burbaum asked to speak to his client alone.

EXHIBIT L

When the interview resumed, the alien stated she had been gainfully employed in the restaurant as a chef. She then stated she had never worked in any other restaurant. I then confronted her about the labor certification application that indicated she had worked for over six years in another restaurant in Taiwan. She stated she had worked there but had not mentioned it to me because she didn't know I wanted all her employments.

When asked how long she had worked there, the answer was "over a year". The attorney once again complained that the interpreter had not given a complete translation. According to Buxbaum, the correct translation was "approximately over a year". I told him that did not in any way change the interpretation. Another dispute arose when the alien and her brother-in-law operated this restaurant. The attorney stated the interpreter was not using the correct word for "own" and that the alien was confusing it for "manage". Mr. Tang asked Buxbaum what word should be used. When Buxbaum pronounced the word, the alien immediately mentioned Chairman Fong. ~~Apparently she associated Buxbaum's word with managing~~ [illegible] ~~rather than owning a business~~. After both these disputes the attorney stated he had no complaints about Mr. Fong's enterprises but he was just trying to make things clearer.

I then asked the alien what her husband had done in Taiwan. The attorney questioned the relevance of the question. I informed him that it was my job to ask questions and determine their relevance, not his. He continued to object and I told him that he could not answer for his client and that if he did not cooperate, I would not continue the interview. I added he could advise his client not to answer.

When I asked the alien if she had ever worked as a pedicab driver in Taiwan, she replied in the affirmative. I then asked her when she did this work. Mr. Buxbaum once again interrupted and began challenging the question, stating it was irrelevant. I told him it was not irrelevant, since the investigation was predicated upon her having worked as a driver rather than a chef. He continued to complain. In the meantime the alien kept stating, "My husband was sick, my husband was sick", and the attorney was trying to quiet her. I informed him that the interview was terminated because of his unreasonable conduct.

I came to get my supervisor and inform him of the situation. When we returned to the interview room, both the alien and attorney had departed.

Dianne Weisheit

Dianne M. Weisheit, Investigator

RSG:wp
76-2634

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WAN SHIH HSIEH,

Plaintiff,

- against -

MAURICE F. KILLY, DISTRICT DIRECTOR AND IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

AFFIDAVIT IN OPPOSITION TO SHOW CAUSE

76 Civ. 3837 (LBM)

- -x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT S. GORAN, Jr., being duly sworn, deposes and says:

1. I am a Special ASsistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and as such, I am in charge of this action.

2. I submit this affidavit in opposition to the plaintiff's May 6, 1977, order to show cause. It is based in pertinent part upon the documents attached as exhibits as well as my experience with this action.

3. Nearly nine months after this action was instituted, defendant's counsel received plaintiff's request for the production of documents pursuant to Rule 34, Fed. R. Civ. P. ('Rule 34 request'), dated April 18, 1977 [Exhibit I]. In plaintiff's Rule 34 request she sought to examine all documents in not only her administrative file but also those contained in the administrative files of Kuo Hsieh, Cheng Chino Hsieh, Man Leh Hsieh and Yu Mieh Chang who purportedly are her children.

4. In response to plaintiff's Rule 34 request, defendant's counsel examined all of the administrative files to which plaintiff sought access. After examining these files and the issues raised by this action, defendant's counsel concluded that the materials they contained were irrelevent to this action. With respect to the plaintiff's file defendant's counsel also concluded that certain documents, concerning the Immigration and Naturalization Service's

('Service') on-going investigation into the allegedly fraudulent manner in which the plaintiff acquired her lawful permanent resident status, were privileged from disclosure. Consequently, on April 25, 1977, defendant's counsel notified the plaintiff for the record of our objections to her Rule 34 request [Exhibit 2]. However, defense counsel also advised the plaintiff that he was aware of the Court's desire to see discovery in this action completed by May 11, 1977, [Exhibit 3], and that he was prepared to grant the plaintiff access to those portions of all of the files which she would be permitted under the Freedom of Information Act [Exhibit 4]. Defendant's counsel also advised plaintiff to call the United States Attorney's Office to arrange a mutually convenient time to conduct this examination [Id.].

5. On Thursday, May 5, 1977, plaintiff's counsel's secretary called the United States Attorney's Office to arrange to examine the files. This call was referred to me since the Special Assistant United States Attorney who had been handling this action, Thomas Belote, Esq., was in the United States Court of Appeals for the Second Circuit at the time arguing the Government's position in Bristol-Myers Company v. F.T.C., Docket No. 77-6016. I advised plaintiff's counsel that I was not familiar with the action and would check with Mr. Belote to determine a convenient time for the examination.

6. On the following day, Friday May 6, 1977, I called plaintiff's counsel's office to determine whether Monday, May 9, 1977, at 10:00 A.M. would be a convenient time for the examination and whether it would be held pursuant to the terms outlined in defense counsel's April 25, 1977, letter [Exhibit 4]. Plaintiff's counsel's secretary advised me that both the time for the examination and the conditions of the examination were acceptable. I was not advised that plaintiff's counsel had any difficulty ascertaining the parameters of his inquiry into the files or that plaintiff's counsel wished to add the Department of State as an additional party to this action.

7. At 4:45 p.m. on Friday, May 6, 1977, the same day on which I had spoken to plaintiff's counsel's secretary, the United States Attorney's Office was served with a copy of this order to show cause. Nevertheless on Monday, May 9, 1977, at 10:30 a.m., I inquired with plaintiff's counsel to ascertain if he still wished to examine the files. At this time I advised plaintiff's counsel that despite the absence of relevance he would be permitted to examine plaintiff's entire administrative file with the exception of those portions which defense counsel determined related to the on-going investigation into the alleged fraudulent manner in which plaintiff obtained her lawful permanent residence. Later, I advised plaintiff's counsel that he would be entitled to examine the other administrative files in toto.

8. Later that day plaintiff's counsel sent his secretary, Ms. Lily Lee, to the United States Attorney's Office, and she was permitted to examine the administrative files pursuant to defense counsel's April 25, 1977, letter and my telephone conversations with plaintiff's counsel earlier that day [Exhibits 5]

9. As is apparent from the memorandum of law submitted with this affidavit, this Court lakes subject matter jurisdiction to consider any of plaintiff's claims, and this order to show cause could be dismissed in that basis as Judge Wyatt did when this action was initially instituted. However, even if this Court had jurisdiction to consider this action (an assumption which we do not concede), nevertheless the prayers for relief contained in plaintiff's order to show cause still should not be granted. After his secretary examined the administrative files, absent that portion of plaintiff's file which was privileged because it related to an on-going administrative investigation into the alleged fraudulent manner in which the plaintiff acquired her lawful status, plaintiff's counsel had obtained all the discovery permissible under the Federal Rules, and more, since significant portions of the

materials examined were not relevant to the issues in this action. In addition, plaintiff's request for a delay in these proceedings until the Department of State can be joined as a defendant is no more appealing. Even with the Department of State as a party to this action, the Court does not have subject matter jurisdiction to order a United States Consul to issue immigrant visas to plaintiff's children.

WHEREFORE, it is prayed that plaintiff's motion be denied in all respects.

Robert S. Groban

ROBERT S. GROBAN, Jr.

Sworn to before me this
10th day of May, 1977.

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720025
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

114 MR BELOTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

WAN SHIH HSIEH,

Plaintiff,

- v -

MAURICE F. KILEY, District Director, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

Civil Action No. 76 Civ. 3837 (LFM)

REQUEST FOR PRODUCTION AND INSPECTION OF DOCUMENTS

- x

Plaintiff, Wan Shih HSIEH, pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby requests defendants Maurice F. Kiley and Immigration and Naturalization Service, to produce and permit plaintiff and her agents to inspect, copy and photograph each of the following documents described as follows:

1. All documents in the "A" file (A20 099 709/NYC) of the plaintiff.

2. All documents in the following "A" files: A20 099 709, A20 593 358, A20 812 518, A20 812 520, A20 812 522.

3. All documents containing statements of witnesses taken on behalf of the defendants, and all documents, papers, correspondence, letters, photographs, and all reports made for or on behalf of the defendant Immigration and Naturalization Service, its officers, employees and agents concerning the investigation of the plaintiff's status and plaintif 's permanent resident petition and petition on behalf of her children.

4. All correspondence between defendants and the United States Embassy or Consulate in Taiwan and Department of State with regard to plaintiff or any member of plaintiff's family.

I

5. For the purposes of this request for production of documents, the term "document" shall mean all written material of any kind or character in the defendants' possession, custody or control, including without limitation letters, correspondence, telegrams, memoranda, records, minutes, agreements, records of notations of telephone or personal conversations or conferences, inter-office communications, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, tape recordings and worksheets. Where originals are not available, authentic copies of such documents may be produced.

6. The documents requested are for the time period up to and including the date of the response to this request, and this is to be considered a request for all future responsive documents continuing through the completion of this proceeding.

7. For the purposes of this request for the production of documents the term "defendants" shall mean the Immigration and Naturalization Service and each of the employees, agents or representatives of the individual defendant, the Immigration and Naturalization Service or the United States Department of Justice, and all persons acting or purporting to act on behalf of the Immigration and Naturalization Service or the Department of Justice for any purpose whatsoever.

8. It is requested that the aforesaid production be made on the 6th day of May, 1977, at 9:30 o'clock in the forenoon of that day at the Law Offices of David C. Buxbaum, P.C., Suite 1612, 11 Broadway, New York, New York 10004.

Dated: New York, New York
April 18, 1977

LAW OFFICES OF DAVID C. BUXBAUM, P.C.
Attorneys for Plaintiff

By: _____
David C. Buxbaum

TO: ROBERT B. FISKE, JR., ESQ.
U. S. ATTORNEY, Southern District of New York
Foley Square
New York, New York 10007
Attention: Thomas Belote, Esq.

Civil Action No. 78 Civ. 3687 (CLT)

Index No. Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VAN CORTLAND,

Plaintiff,

- against -

HAROLD P. KLEIN, District Director, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

REQUEST FOR PRODUCTION AND INSPECTION OF DOCUMENTS

LAW OFFICES OF DAVID C. BOSMAN, P.C.

Attorney for Plaintiff,

Office and Post Office Address, Telephone
11 Broadway, Suite 1022
New York, New York 10004
(212) 425-1047

To ROBERT B. HOLT, JR., ESQ., U.S. ATTY.
Foley Square, New York, NY 10007
Attorney(s) for Defendants.

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

.....

that the within is a *(certified)*

the office of the clerk of the within
19

Yours, etc.,

Office and Post Office Address

for 116.

NOTICE OF SETTLEMENT

take notice that an order

the within is a true copy will be presented
ent to the Hon.

judges of the within named Court, at

19

M.

Yours, etc.,

Office and Post Office Address

SDNY ARCHIVES

F. B. I.

UNITED STATES ATTORNEY

4-18-77

117

RSG:ml
76-2834

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH, Plaintiff, - v -	:
MAURICE F. KILEY, District Director, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	: RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS : 76 Civ. 3837 (LFM)

The defendants respond to the request for the production of documents made by the plaintiff pursuant to Rule 34(a) of the Federal Rules of Civil Procedure by advising the plaintiff that the request is objected to because, inter alia, the information requested is privileged and not relevant to this action.

ROBERT B. FISKE, Jr.,
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: Robert S. Groban.
ROBERT S. GROBAN, Jr.
Special Assistant United States
Attorney
Office & P.O. Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-0021

To: David C. Buxbaum, P.C.
11 Broadway
New York, New York 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK 118

Wm Shih Hsieh

Plaintiff(s),

-against-

Kiley et al

Defendant(s).

PRE-TRIAL ORDER NO. 2

76 Civ. 3837 (LFM)

The parties to this action, by their attorneys, having appeared before this court at a pre-trial conference on 3-28, 1977, pursuant to Rule 16 of the Federal Rules of Civil Procedure, it is hereby stipulated and ordered that:

1. The parties shall complete all discovery and inspection by 5-11, 1977.

2. The parties shall, in order to prevent delay or interruption of the trial, have sufficient witnesses present at all times during the trial and shall perpetuate before trial the testimony of any essential witness, on direct and cross-examination, including physicians or other experts likely to be unavailable when required upon the trial.

3. The parties shall submit, on or before 5-11-77, a trial brief of not more than ten (10) pages; a joint statement of the ultimate facts which are not in dispute; a joint statement of the disputed issues of fact requiring a trial; ~~and a reasonable number of requests to charge~~/proposed findings of fact and conclusions of law.

4. The parties shall pre-mark all exhibits for identification, plaintiff using numbers and defendant using letters.

5. This action shall be added to our reserve trial calendar on or after 5 [illegible], 1977, and thereafter when reached will be placed on our ready trial calendar, published in the New York Law Journal. Once published on the ready trial calendar, all parties must be ready to proceed to trial on short telephonic notice. Adjournments will not be granted once the case is on the ready trial calendar, except for good cause arising from some event occurring thereafter.

6. _____ shall move by _____, 197 for an order _____.

_____ shall settle an order within ten (10) days in accordance with this court's rulings on _____ motion for _____.

This action is referred to _____ for _____.

7. The undersigned attorneys shall bring this order to the attention of trial counsel and any other attorney now or hereafter involved in this litigation.

8. Failure to comply with any of the provisions of this order may result in this court's imposing appropriate sanctions, including termination of the action.

Dated: New York, N. Y.
3-24, 1977.

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

SO ORDERED:

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

119

RSG:ml
76-2834

April 25, 1977

David C. Buxbaum, Esq.
Suite 1612
11 Broadway
New York, New York 10004

Re: Wan Shih Hsieh v. Kiley, 76 Civ 3837 (LFM)

Dear Mr. Buxbaum:

Please find enclosed our answer to your Rule 34 request in this action. As that answer indicates, we will not voluntarily produce for your inspection any of the investigative materials contained in the administrative files to which you referred in your Rule 34 request. These documents are privileged and irrelevant to the issues raised in this mandamus action.

In the course of other mandamus litigations where similar requests have been made to examine the investigative portions of administrative files, we have denied those requests and referred the plaintiffs to the pertinent portions of the Freedom of Information Act and 8 C.F.R. §103.10 et seq., where greater access to those files may be made. In this action we recognize the time pressures of the Court's order with respect to discovery and the fact that the Immigration Service may not respond to an information request before that discovery period expires. Consequently, we are prepared to grant you access to the same portions of the plaintiff's administrative file which you would be permitted to examine under the Freedom of Information Act.

If these conditions are satisfactory, please call this office to arrange a mutually convenient time to conduct this examination.

Very truly yours,

ROBERT B. FISKE, Jr.,
United States Attorney

By: _____
ROBERT S. GROBAN, Jr.,
Special Assistant United States
Attorney

Enclosure

4

120

):ml
-2834

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

WAN SHIH HSIEH,

Plaintiff,

- v -

MAURICE F. KILEY, District Director, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

76 Civ. 3837 (LFM)

- x

DAVID C. BUXBAUM, Esq., attorney for the plaintiff in this action, hereby acknowledges that on Tuesday, January 4, 1977 at the office of the United States Attorney's office for the Southern District of New York, One St. Andrew's Plaza, New York, New York, I was permitted access to the administrative files of Kuo Hsieh (A20 593 356), Cheng Chiuo Hsieh (A20 812 520), Man Leh Hsieh (A 20 812 518); and Yu Nieh Chang (A20 812 522), was allowed to examine these files completely at my leisure in the presence of a Special Assistant United States attorney, and was informed by the Special Assistant United States attorney that the files I examined constituted the complete administrative file of the difendant with respect to these aliens.

Dated: New York, New York

May 9, 1977

DAVID C. BUXBAUM, Esq.,

By: Lily Lee

LILY LEE
Secretary to David C. Buxbaum, Esq.

5

121-122

RSG:ml
76-2834

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

WAN SHIH HSIEH,

Plaintiff,

- v -

MAURICE F. KILEY, District Director, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

: 76 Civ. 3837 (LFM)

- x

DAVID C. BUXBAUM, Esq., attorney for the plaintiff in this action, hereby acknowledges that on Tuesday, January 4, 1977 at the office of the United States Attorney's office for the Southern District of New York, One St. Andrew's Plaza, New York, New York, I was permitted access to the administrative file of the plaintiff and was allowed to examine this file completely (with the exception of those portions which, the U.S. Attorney's office removed because they contended they concerned the on-going investigation into the manner in which the plaintiff obtained her adjustment of status) at my leisure in the presence of a Special Assistant United States Attorney.

Dated: New York, New York

May 9, 1977

DAVID C. BUXBAUM, Esq.,

By: Lily Lee
LILY LEE
Secretary to David C. Buxbaum, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

WAN SHIH HSIEH,

Plaintiff,

- v -

MAURICE F. KILEY, District Director and IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

NOTICE OF MOTION

76 Civ. 3837 (LPN)

- x

S I R :

PLEASE TAKE NOTICE that upon the complaint in this action, the accompanying memorandum of law and affidavit of Robert S. Groban, Jr., dated May 18, 1977, and all of the prior proceedings in this action, the defendants by their attorney Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, hereby moves pursuant to Rules 12(b)(6) and 16, Federal Rules of Civil Procedure, for an order dismissing this action.

Dated: New York, New York
May 18, 1977.

ROBERT B. FISKE, Jr.,
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: _____
ROBERT S. GROBAN, Jr.,
Special Assistant United States Attorney
Office & P.O. Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-0021

To: David C. Buxbaum, Esq.
Suite 1612
11 Broadway
New York, New York 10004

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH, Plaintiff,	:	
- v -	:	AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS
MAURICE P. KILEY, District Director and IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	:	76 Civ. 3337 (LPK)

STATE OF NEW YORK	:	
COUNTY OF NEW YORK	:	SS.:
SOUTHERN DISTRICT OF NEW YORK	:	

ROBERT S. GROBAN, Jr., being duly sworn, deposes and says:

1. I am a special assistant United States attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and as such, I am in charge of this action.

2. I submit this affidavit in support of defendants' motion for an order, pursuant to Rule 16, Federal Rules of Civil Procedure, and paragraph 8 of this Court's third pre-trial order, dismissing this action for plaintiff's failure to comply with pre-trial orders two and three. In pertinent part, this affidavit is based upon the documents attached as exhibits as well as my experience with

3. This action was instituted and brought on by order to show cause on August 28, 1976. On September 3, 1976 the Hon. I.B. Wyatt, United States District Judge, dismissed plaintiff's order to show cause as being totally without merit From that date until March 28, 1977 when this Court held a pre-trial conference in this case, plaintiff took no steps to prosecute this case.

4. At the pre-trial conference this Court issued its second pre-trial order which required, inter alia, that discovery be completed by April 11, 1977 and that the parties stipulate to and submit joint statements of agreed and disputed facts by April 18,1977 [Exhibit 1]. Despite ample time to conduct discovery and to prepare these joint statements plaintiff did nothing. Consequently, on April 14, 1977 the defendants hurriedly prepared proposed joint statements of agreed and disputed facts and forwarded them to the plaintiff's counsel. At this time defendants' counsel was informed by plaintiff's counsel that he would be unable to meet with us to review the proposed joint statements because he was departing from the United States the following day.

5. On April 15, 1977, four days after the time allotted for discovery expired, plaintiff filed an order to show cause requesting this Court to extend the time limits contained in its second pre-trial order for discovery and submission of other documents. The defendants agreed to extend the second pre-trial order's time limits for one month and this agreement was memorialized in a stipulation dated April 15, 1977 [Exhibit 2]. Consequently, discovery now had to be completed by May 11, 1977 and joint statements

of agreed and disputed facts had to be submitted by May 18, 1977 (Id.).

6. On April 30, 1977, in an effort to avoid more last minute problems, defendants' counsel forwarded proposed joint statements of agreed and disputed facts to plaintiff's counsel and requested plaintiff's counsel to review them and to let defendants' counsel know if they were satisfactory [Exhibit 3]. Defendants' counsel received no response.

7. On May 10, 1977, after this Court denied plaintiff's belated discovery request noting the dilatory manner in which it was made, defendants' counsel advised plaintiff's counsel a second time to contact him with respect to the joint statements of agreed and disputed facts so that both parties could comply with their stipulation amending this Court's second pre-trial order [Exhibit 4]. As a result of plaintiff's counsel's failure to respond to this Court's second pre-trial order until the very last opportunity, the May 10th letter also advised plaintiff's counsel that his response to our proposed joint statement had to be in writing and had to be received at defense counsel's office by 5 P.M. on Friday, May 13, 1977 (Id.) [This latter requirement was inserted for two reasons. First, it was designed to avoid last minute disagreements as to the content of the joint statements which could delay their timely submission to this Court. Second, it also was included to insure that the statements

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could be prepared by the May 18, 1977 deadline since there have been substantial delays in defense counsel's office in getting documents typed and prepared].

8. When defense counsel received no reply from plaintiff's counsel by the 5 P.M. deadline and received no oral explanation why a reply would be late or not forthcoming, he forwarded the proposed joint statements of disputed and agreed facts to the typing unit and left for the weekend.

9. Since the deadline established by the May 10, 1977 letter had passed, apparently without response, defense counsel made no efforts to contact plaintiff's counsel. Nor did plaintiff's counsel inquire with defendant's counsel with respect to the proposed joint statements. Even when defense counsel was served with the mandamus petition which plaintiff's counsel had instituted in the United States Court of Appeals for the Second Circuit, Docket No. 77-3032, to compel this Court to grant plaintiff a delay in these proceedings, not one word was mentioned by plaintiff's counsel's secretary who delievered the papers concerning the proposed joint statements.

10. At 7 P.M. defense counsel was looking for something on his secretary's desk and by accident discovered a letter from plaintiff's counsel relating to the proposed joint statements [Exhibit 5]. Of course this discovery occurred too late to have any conference between the parties concerning the proposed statements or to have those documents re-typed in time to comply with this Court's pre-trial order. However the next day I inquired with my secretary as to when this letter was delievered. She informed me that it had been

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handed to her at 5:30 P.M. on Friday, May 13, 1977 after I had left for the week-end and that she had forgotten to advise me about it [Exhibit 6].

11. The fact that plaintiff's counsel responded to our April 30 and May 10 letters, albeit belatedly, does not alter the dilatory manner in which he has conducted this litigation. He was advised nearly a month ago concerning what defense counsel intended to include in the joint statements of disputed and agreed facts and did not respond. On April 30 and May 10 defense counsel again advised plaintiff's counsel to participate in the preparation of these joint statements and no reply, either orally or in writing, was received to these letters until 5:30 P.M., Friday, May 13, 1977, when the time to confer and incorporate changes into these documents had expired. Moreover, as even a casual glance at the objections raised by plaintiff's counsel reveals, these objections were raised solely to obfuscate the issues in this action and delay its resolution. This purpose is apparent because most of the objections relate to matters about which there can be no disagreement since they are based on legally operative documents contained in plaintiff's administrative file which she has had an opportunity to examine.

12. Plaintiff's conduct in this action can be summed up in one word - DELAY. Despite ample time to conduct discovery and to confer with defendants' counsel with respect to the preparation of joint statements of agreed and disputed facts, plaintiff has purposefully defied this Court's pre-trial orders as well as his own stipulation and refused to comply with the provisions of those documents. Against the history of this litigation and plaintiff's refusal to comply with this Court's pre-trial order, defendants suggest that an order dismissing this action pursuant to paragraph 8 of this Court's pre-trial order and Rule 16, Federal Rules of

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again respectfully submitted that this action should be dismissed pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, because this Court lacks subject matter jurisdiction to consider the issues raised by the complaint.

WHEREFORE, it is prayed that defendants' moti to dismiss be granted, that plaintiff's action be dismisse and that defendants be granted such other and further reli as to this Court seems just and proper.

ROBERT S. GROZAN, Jr.

Sworn to before me this
18th day of May, 1977

PATRICK H. BARTH
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4626297
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Wan Shih Hsieh :

Plaintiff(s), :

-against- :

Kiley et al. :

Defendant(s). :

PRE-TRIAL ORDER NO. 2

76 Civ. 3537 (LFM)

Non Jury

The parties to this action, by their attorneys, having appeared before this court at a pre-trial conference on 2-25, 1977, pursuant to Rule 16 of the Federal Rules of Civil Procedure, it is hereby stipulated and ordered that:

1. The parties shall complete all discovery and inspection by 5-11, 1977.

2. The parties shall, in order to prevent delay or interruption of the trial, have sufficient witnesses present at all times during the trial and shall perpetuate before trial the testimony of any essential witness, on direct and cross-examination, including physicians or other experts likely to be unavailable when required upon the trial.

3. The parties shall submit, on or before 5-11-77, a trial brief of not more than ten (10) pages; a joint statement of the ultimate facts which are not in dispute; a joint statement of the disputed issues of fact requiring a trial; ~~and a reasonable number of requests to charge~~/proposed findings of fact and conclusions of law.

4. The parties shall pre-mark all exhibits for identification, plaintiff using numbers and defendant using letters.

5. This action shall be added to our reserve trial calendar on or after 4-5, 1977, and thereafter when reached will be placed on our ready trial calendar, published in the New York Law Journal. Once published on the ready trial calendar, all parties must be ready to proceed to trial on short telephonic notice. Adjournments will not be granted once the case is on the ready trial calendar, except for good cause arising from some event occurring thereafter.

6. _____ shall move by _____, 197 for an order _____.

_____ shall settle an order within ten (10) days in accordance with this court's rulings on _____ motion for _____.

This action is referred to _____ for _____.

7. The undersigned attorneys shall bring this order to the attention of trial counsel and any other attorney now or hereafter involved in this litigation.

8. Failure to comply with any of the provisions of this order may result in this court's imposing appropriate sanctions, including termination of the action.

Dated: New York, N. Y.
3-31, 1977.

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

SO ORDERED:

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WAN SHIH HSIEH,

Plaintiff,

- v -

MAURICE F. KILEY, District Director and IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants.

- -x

STIPULATION

76 Civ. 3837 (LPM)

WHEREAS David C. Buxbaum, attorney for the plaintiff, has been required to travel abroad on other legal matters; and

WHEREAS pending administrative action relating to the issues in the above-captioned action may moot the underlying complaint

IT IS HEREBY STIPULATED AND AGREED that upon consent of this Court, the pretrial order dated March 28, 1977 be amended to provide that:

1. The parties shall complete all discovery and inspection by May 11, 1977.

2. The parties shall submit, on or before May 18, 1977, a trial brief of not more than 10(10) pages; a joint statement of the ultimate facts which are not in dispute; a joint statement of the disputed issues of fact requiring a trial; proposed findings of fact and conclusions of law.

3. This action shall be added to our reserve trial calendar on or after May 25, 1977, and thereafter when reached will be placed on our ready trial calendar, published in

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the New York Law Journal. Once published on the ready trial calendar, all parties must be ready to proceed to trial on short telephonic notice. Adjournments will not be granted once the case is on the ready trial calendar, except for good cause arising from some event occurring thereafter.

Dated: New York, New York
April 15, 1977.

Law Offices of David C. Bernbaum, P.C.

By: William C. Lennon III
Attorney for Plaintiff

ROBERT B. FISKE, Jr.,
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: Thomas H. Belote
THOMAS H. BELOTE
Special Assistant United States
Attorney

SO ORDERED:

United States District Judge

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RSG:art

April 30, 1977

David C. Buxbaum, Esq.
Law Offices of David C. Buxbaum, P.C.
11 Broadway
Suite 1612
New York, New York 10007

Re: Wan Shih Hsieh v. Kiley
76 Civ. 3837 (LFM)

Dear Mr. Buxbaum:

Pursuant to Judge MacMahon's pre-trial order No. 3, we enclose the following:

1. One proposed joint statement of agreed facts; and

2. Our proposed joint statement of disputed facts.

Please review them and let us know if they are satisfactory.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: _____
ROBERT S. GROBAN, JR.
Special Assistant United States Attorney

Enclosures

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76-2834

May 10, 1977

David C. Buxbaum, Esq.
Suite 1612
11 Broadway
New YOrk, New York 10004

Re: Wan Shih Hsieh v. Kiley, 76 Civ. 3837 (LFM)

Dear Mr. Buxbaum:

On April 30, 1977, pursuant to Judge MacMahon's pre-trial order No. 3, we forwarded to you a copy of our proposed joint statement of agreed facts and our proposed joint statement of disputed facts. To date we have not heard from you with respect to either of these documents.

As you realize Judge MacMahon's pre-trial order requires both parties to this action to agree on joint statements of agreed and disputed facts and to submit these statements to him on or before May 18, 1977. Your failure to respond to our April 30, 1977 letter makes it impossible for us to comply with Judge MacMahon's order. Therefore, please be advised that if we do not receive your written objections to our proposed joint statements of agreed and disputed facts by 5 PM Friday, May 13, 1977, we shall submit those statements to Judge MacMahon as the agreed statements required by his pre-trial order.

Very truly yours,

ROBERT B. FISKE, Jr.,
United States Attorney

By: _____
ROBERT S. GROBAN, Jr.,
Special Assistant United States
Attorney

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LAW OFFICES OF
DAVID C. BUXBAUM P.C.
SUITE 1612
11 BROADWAY
NEW YORK, N.Y. 10004

David C. Buxbaum
William A. Simon III

(212) 425-4347

May 12, 1977

Robert B. Fiske, Jr., Esq.
United States Attorney for the
Southern District of New York
United States Department of Justice
One St. Andrew's Plaza Annex
New York, New York 10007

Attention: Robert S. Grobar, Jr., Esq.

Re: Wan Shih Hsieh v. Kiley
76 Civ. 3837 (LFM)

Dear Mr. Grobar:

With regard to your proposed "Joint Statement of Agreed Facts" and proposed "Statement of Disputed Facts" relevant to the above-captioned matter, we have the following comments.

A. "Joint Statement of Agreed Facts"

Paragraph 4: We suggest it should read: "On April 11, 1973 a labor certification was issued to Hsieh." We do not know the basis of that labor certification, and the documents enclosed therein speak for themselves.

Paragraph 11: We do not agree [illegible]ny of those facts. Thus paragraph 11 should be eliminated.

Paragraph 12: Should be eliminated.

Paragraph 13: Should read: "On July 13, 1976 and May 19, 1976 Hsieh's attorney wrote to the Service complaining that the Service failed to act with respect to Hsieh's visa petitions on behalf of her three children and with respect to the inquiries from the United States Department of State."

Paragraph 14: Should be eliminated, since we have no knowledge of it.

Paragraph 15: Should be eliminated. It is not correct.

Paragraph 16: Should be eliminated. The facts are incorrect.

Paragraph 17: The words "many of the" on the fourth line of this paragraph should be eliminated. Also, all words after the period in the fifth line from the top of paragraph 17 should be eliminated.

B. "Statement of Disputed Facts"

Paragraph 1: I would think that your paragraph 1 is undisputed and clearly that Wan Shih Hsieh did apply for adjustment of status of her children.

Paragraph 2: I would think that paragraph 2 is undisputed, but we have no objection to its inclusion.

Paragraphs 2, 3, and 5: In each of these paragraphs the inclusion of "Hsieh's attorney", as if he were a party defendant, we believe is unethical and improper and should be eliminated.

Paragraph 4: We believe that the last sentence of this paragraph should read: "If the Service has a duty to act, did it act reasonably pursuant to its duty?"

Paragraph 5: We do not believe that it is relevant here because neither Hsieh nor her attorney are defendants in this action, and therefore, we believe this paragraph should be eliminated.

Paragraph 8: We believe that a paragraph should be added with regard to the "Statement of Disputed Facts" which should read: "Whether the Service and its employees acted outside the scope of their authority? If so, when did this occur and where? If they did so act, what recovery can be made on that basis?"

Paragraph 9: We believe that a paragraph should be added which should read: "Whether the Service can be compelled to perform its duty, presuming it has a duty to Hsieh and the Department of State?"

Paragraph 10: We believe that a paragraph should be added which should read: "Whether damages should be granted for failure of the Service to perform its duty and if so, what is the quantum of said damages?"

In general, we believe your "Statement of Disputed Facts" are really "Statements of Issues" rather than disputed facts, and they should be restructured. In view of the unrealistic time parameters presently set, if you wish to discuss this matter with us, we will be happy to do so.

Very truly yours,

LAW OFFICES OF DAVID C. BUXBAUM, P.C.

By; _____
David C. Buxbaum

DCB:pmo

STATE OF NEW YORK :
COUNTY OF NEW YORK : SS.:
SOUTHERN DISTRICT OF NEW YORK :

MILDRED L. LEVENTON, being duly sworn, deposes and says:

1. I am employed as a secretary in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, at the United States Courthouse Annex, One Saint Andrew's Plaza, New York, New York.

2. I am assigned to work primarily for Special Assistant United States attorneys Robert S. Groban, Jr., Thomas H. Belote and Richard Leon. As a result, my desk is located immediately outside their offices on the fourth floor of the Courthouse annex.

3. A portion of my responsibilities include receiving telephone messages and written communications for the Special Assistants when they are out of the office, unable to talk or accept the communication themselves or when the outside receptionist is not on duty or has left for the day.

4. On Friday, May 13, 1977, at approximately 5:30 P.M., after both the outside receptionist and Mr. Groban had left the office for the week-end, I began to leave the office for the week-end. As I reached the outside door on the fourth floor I was approached by a woman who said that she was from the office of David C. Buxbaum and inquired whether Mr. Groban was still in his office. When I informed her Mr. Groban was not in his office, she handed me a sealed envelope, asked me to deliver it to Mr. Groban, and requested me to sign a document which she claimed merely acknowledged that the letter had been delievered. After I signed this document (I was not provided with a copy), the woman departed and I left the envelope on the corner of my desk and also left.

5. By Monday, May 16, 1977, I had completely forgotten about Mr. Buxbaum's letter which now had been buried under the week-end's mail. In fact it was not until Wednesday, May 18, 1977, when Mr. Groban asked me whether anything had been delivered from Mr. Buxbaum's office, that I recalled the events surrounding the delivery of the letter on Friday, May 13, 1977 and related these circumstances to him. At this point he asked me to prepare and sign an affidavit describing these events and this affidavit represents my compliance with Mr. Groban's request.

Mildred L. Leventon

MILDRED L. LEVENTON

Sworn to before me this
18th day of May, 1977

Ralph I. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1979

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAN SHIH HSIEH,	:	
Plaintiff,	:	AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
-v-	:	
MAURICE F. KILEY, District Director; IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,	:	76 Civ. 3837 (LFM)
Defendants.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT S. GROBAN, JR., being duly sworn, deposes and says:

1. I am a Special Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and, as such, I am in charge of this action.

2. I submit this affidavit in opposition to plaintiff's belated motion for summary judgment. It is based on the documents attached as exhibits as well as my experience with this action.

3. Since plaintiff's June 2, 1977 affidavit in support of the summary judgment motion is replete with extensive discussions of the most trivial aspects of this case, an obvious attempt to divert this court's attention from the real issues at bar, a detailed response to that affidavit is unnecessary. However, certain allegations in plaintiff's affidavit require brief consideration.

A. The Preparation of Defendants' Proposed Joint Statements of Agreed and Disputed Facts

4. The affidavit in support of the motion to dismiss ("motion to dismiss affidavit") describes defense counsel's repeated and unsuccessful attempts to persuade the plaintiff to cooperate voluntarily in the timely preparation of the joint statements of agreed and disputed facts ("joint statements") required by this Court's pre-trial order. Paragraphs 8-10 of that affidavit also detail defense counsel's final effort to obtain this cooperation, the establishment of a deadline prior to which plaintiff had to submit her written objections to defendants' proposed joint statements. In plaintiff's affidavit in support of the motion for summary judgment ("summary judgment affidavit"), she surprisingly made no attempt to justify her failure to respond to defense counsel's repeated inquiries but rather elected to focus on what she asserted were factual inconsistencies in the motion to dismiss affidavit and on what she characterized as the "unrealistic time parameters" imposed on her by the defendants' efforts to comply with this Court's pre-trial order. A short examination of each of these contentions will demonstrate their specious nature and again illustrate the dilatory manner in which the plaintiff has prosecuted this litigation.

5. The factual inconsistency to which plaintiff refers occurs from a comparison of paragraphs 8 and 10 of the motion to dismiss affidavit in which plaintiff's last minute effort to comply with this Court's pre-trial order and defendants' deadline are discussed. Thus while paragraph 8 states:

"When defense counsel received no reply from plaintiff's counsel by the 5 P.M. deadline and received no oral explanation why a reply would be late or not forthcoming, he forwarded the proposed joint statements of disputed and agreed facts to the typing unit and left for the weekend."

Paragraph 10 appears inconsistent by stating:

"At 7 P.M. defense counsel was looking for something on his secretary's desk and by accident discovered a letter from plaintiff's counsel relating to the proposed joint statements....Of course this discovery occurred too late to have any conference between the parties concerning the proposed statements or to have those documents re-typed in time to comply with this court's pre-trial order. Moreover, the next day I inquired with my secretary as to when this letter was delivered. She informed me that it had been handed to her at 5:30 P.M. on Friday, May 13, 1977 after I had left for the week-end and that she had forgotten to advise me about it [Exhibit 6]".

6. In this regard the inconsistency in these two paragraphs with respect to the time defense counsel left his office on the date the defendants' deadline expired is apparent. Yet as paragraphs 4-5 of the affidavit of Mildred Leventon (exhibit 6 to the motion to dismiss affidavit) demonstrates, this inconsistency does not result from a mendacious motive, as plaintiff asserts, but rather from the simple omission of an introductory phrase in paragraph 10. Thus the first sentence of paragraph 10 should obviously read:

"On Tuesday, May 17, 1977 at 7 P.M. defense counsel was looking for something on his secretary's desk and by accident discovered a letter from plaintiff's counsel relating to the proposed joint statements (Exhibit 5)...."

7. Plaintiff's next objection, in paragraphs 11-20 of the summary judgment affidavit, revolve around the "unrealistic time parameters" which she claims were imposed

on her by the defendants for the completion of the joint statements. However, as the motion to dismiss affidavit demonstrates, the simple dispositive facts remain that, despite our furnishing to the plaintiff proposed joint statements over a month prior to the date on which they were due, plaintiff and her counsel have chosen not to comply with the time deadlines set forth in this Court's pretrial orders and have yet to draft proposed joint statements of their own or furnish this Court with the statement of agreed facts required by Rule 9(g) of the General Rules of the United States District Courts for the Southern District of New York. By delivering her objections at the eleventh hour, plaintiff precluded any possibility of meaningful cooperation, the main reason for the defendants' "deadline", and made any discussion of the exact time when those objections were served unnecessary.

B. This Action Should Be Dismissed

8. In the memorandum of law and affidavit submitted in support of the motion to dismiss we demonstrated how this Court lacked subject matter jurisdiction to consider this action and why, even if it had jurisdiction, plaintiff's claims still failed to state a claim upon which relief can be based. We also demonstrated the dilatory manner in which plaintiff has elected to prosecute this action, despite her claim of irreparable injury with each passing day, and the complete disregard for this Court's pre-trial orders which she has exhibited. Finally, through the affidavit of Dianne M. Weisheit, the Service's investigator assigned to plaintiff's case, we further demonstrated how the plaintiff's refusal to cooperate in the administrative investigation (Exhibit A remains the sole obstacle

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to its completion. Since nothing in any of the papers submitted by the plaintiff alters the sound legal foundation of the defendants' contentions or challenges the picture of plaintiff's dilatory conduct painted in defendants' papers, we respectfully request this Court to grant our motion to dismiss and deny plaintiff's cross-motion for summary judgment.

WHEREFORE, it is prayed that defendants' motion to dismiss be granted, that plaintiff's action be dismissed with prejudice, and that defendants be granted such other and further relief as to this Court seems just and proper.

Robert S. Groban J.

ROBERT S. GROBAN, JR.,
Special Assistant United States Attorney

Sworn to before me this
22nd day of June, 1977.

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720325
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1979

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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

FILE NUMBER

A20 812 709

DATE

May 27, 1977

Wan Shih HSIEH
apt B506
79-11 41st Ave
Elmhurst, N.Y. 11373

Please come to the office shown below at the time and place indicated in connection with an official ma

OFFICE LOCATION	26 Federal Plaza Room No. 10 Floor No.
DATE AND HOUR	Tuesday, June 7, 1977 10a.m.
ASK FOR	Dianne M. Weisheit 264-5809
REASON FOR APPOINTMENT	your past and present employments
BRING WITH YOU	this letter, employment records

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH
If you are unable to do so, state your reason, sign below and return this letter to this office at once.

David Buxbaum, P.C.
11 Broadway
Suite 1612
New York, New York 10004

I am unable to keep the appointment because:
This case is now pending before the U.S. District Court, Southern District of New York. An interview has already been had before the same employee of the I.N.S.

SIGNATURE	DATE
David C. Buxbaum	June 3,1977

Very truly yours,

Henry E. Petrigner

Form G-56
(Rev. 5-1-73) N

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